CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 16

INTERNATIONAL ASSOCIATION OF MACHINISTS; TOOL AND DIE MAKERS LODGE No. 35, ETC., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED FEBRUARY 17, 1940.

CERTIORARI GRANTED APRIL 1, 1940.

BLANK PAGE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 16

INTERNATIONAL ASSOCIATION OF MACHINISTS; TOOL AND DIE MAKERS LODGE No. 35, ETC., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX.

	Original	Print
Proceedings in United States Court of Appeals for the District of Columbia	1	1
Petition to review and set aside order of N. L. R. B.	1	1
Exhibit "A"—Closed shop agreement, August 6, 1937	8	7
Exhibit "B"—Notice to Board, July 23, 1938	12	11
Exhibit "C"—Notice to Board, July 22, 1938	13	12
Answer to petition	17	16
Proceedings before National Labor Relations Board	21	18
Caption and appearances	21	18
Testimony of Edward Johnson (omitted in printing)	22	
Cletus Garrett (omitted in printing)	24	
Walter Scott Garrett (omitted in printing)	26	
Gerald Parkison (omitted in printing)	30	
Maurice Slaughter (omitted in printing)	31	
Rudolph Keil	32	10
Francis Witmer	39	22
Shelby Merle Tolley (omitted in printing)	50	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPT. 13, 1940.

--9729

Proceedings before National Labor Relations Board—Continued

Testimony of—Continued	Original	Print
Harold Sharpe	52	29
Robert Bunch	60	34
Chester Kirby	62	34
Robert Earl Manlove (omitted in printing)	71	
Erskine E. Allison	71	39
Charles J. Fensel	76	42
Dwight Eugene Stiffler (omitted in printing)	77	
Isaac Newton Garrett (omitted in printing)	79	
Glen L. Jones.....(omitted in printing)..	81	
Lon S. Cole.....(omitted in printing)..	81	
Wilbur G. Mitchell (omitted in printing)..	83	
Carl Carmen .....(omitted in printing)..	86	
Catherine L. Long.(omitted in printing)..	86	
Wilbur Garrett ...(omitted in printing)..	87	
Levi C. Benn	88	43
Jacob Lear	93	49
Ira Lawrence ....(omitted in printing)..	95	
Floyd Stevenson	97	50
Walter B. Baldridge (omitted in printing)	101	
Cleda Watts Crutcher (omitted in printing)	103	
James Condon	103	54
Mona Armstrong ..(omitted in printing)..	107	
Grant Steele .....(omitted in printing)..	113	
Agnes Holland....(omitted in printing)..	116	
Pauline Clements.(omitted in printing)..	116	
Mona Armstrong (recalled) (omitted in printing)	117	
Mary Worster ....(omitted in printing)..	117	
Herman Martin Davis	119	56
Christena Kitchen (omitted in printing)..	120	
Curtis Landers ..(omitted in printing)..	123	
John H. Allred	125	58
Richard Cameron (omitted in printing)..	127	
Pearl Hurtt .....(omitted in printing)..	131	
Olive Eastman ...(omitted in printing)..	132	
Bessie M. Price ..(omitted in printing)..	134	
Edward Youngman (omitted in printing)	136	
Leroy Everroad ..(omitted in printing)..	137	
S. D. Murphy	138	58
Clay Collins	162	75
Martha Keener ...(omitted in printing)..	166	
Luther Crutcher..(omitted in printing)..	168	
Barney Maynard..(omitted in printing)..	171	
Joseph Conner ....(omitted in printing)..	180	

	Original	Print
Proceedings before National Labor Relations Board—Continued		
Testimony of—Continued		
Gilbert R. Clark ..(omitted in printing)..	181	
Raymond Desmond (omitted in printing)..	187	
Flbie Horner.....(omitted in printing)..	189	
Mary Upchurch ...(omitted in printing)..	190	
Mary King .....(omitted in printing)..	190	
Jacob Gordon ....(omitted in printing)..	191	
Margaret Patterson (omitted in printing)	192	
Marjorie Stoker ..(omitted in printing)..	195	
John Hefley.....(omitted in printing)..	197	
Walter Clements..(omitted in printing)..	198	
Lawrence Collins (recalled) (omitted in printing)	199	
James Mills.....	200	78
Everet Collins ...(omitted in printing)..	204	
Elree Bryant .....(omitted in printing)..	211	
George Cole .....(omitted in printing)..	213	
Charles Welch ....(omitted in printing)..	217	
Martha Blankenship (omitted in printing)	219	
Cleo Willis .....(omitted in printing)..	221	
Gilbert Clark (recalled)	223	83
Harold Sharpe (recalled).....	228	86
S. D. Murphy (recalled)	240	98
A. F. Westlund...(omitted in printing)..	242	
S. D. Murphy (recalled)	251	99
Oscar McCoy	305	109
S. D. Murphy (recalled) (omitted in printing)	311	
A. F. Westlund (recalled)	320	116
Earl Portteus ....(omitted in printing)..	325	
Jesse Stillwagon ..(omitted in printing)..	326	
Catherine Miles ..(omitted in printing)..	327	
Warren Leet .....(omitted in printing)..	328	
Earl Gregory ....(omitted in printing)..	329	
Frank Deerr, Jr. ..(omitted in printing)..	329	
Earl Gregory (recalled) (omitted in printing	330	
Wayne Shelmer ..(omitted in printing)..	331	
Everett L. Butler..(omitted in printing)..	336	
Rogers Humphrey (omitted in printing)..	337	
Kraft Anthrum ..(omitted in printing)..	339	
John D. Lewis	343	117
Cecil B. Shock	346	119
Arthur R. Baker	369	128
Fred White .....(omitted in printing)..	379	
Joseph Bolander	383	136
Walter Fouts	385	137
Allie Locke .....(omitted in printing)..	389	

	Original	Print
Proceedings before National Labor Relations Board—Continued		
Testimony of—Continued		
Marion Swift	392	138
Moses M. Birod	395	139
Sterl Huber ..... (omitted in printing)	425	
Fred E. Irvine	430	156
Raymond Desmond (recalled) (omitted in printing)	433	
Agnes Holland (recalled) (omitted in printing)	435	
Jeanice Hopkins... (omitted in printing)	436	
Andrew Chandler (omitted in printing)	436	
Colloquy	441	158
Complaint ..... (omitted in printing)	447	
Amended charge ..... (omitted in printing)	454	
Charge ..... (omitted in printing)	456	
Return receipt card ..... (omitted in printing)	461	
Petition for investigation, &c.... (omitted in printing)	462	
Order of consolidation and directing investigation and hearing (omitted in printing)	465	
Motion to intervene..... (omitted in printing)	466	
Order permitting intervention... (omitted in printing)	467	
Proposed amendment ..... (omitted in printing)	468	
By-laws of Acme Machine Products Co. Employees' Association (omitted in printing)	470	
Shop rules ..... (omitted in printing)	471	
Finding of Judge Guthrie of the Delaware Circuit Court.	472	163
Agreement for consent election	474	165
Stipulation re certain facts..... (omitted in printing)	478	
Proposed amendment to complaint (omitted in printing)	481	
List of members of Tool and Die Makers Lodge No. 35 (omitted in printing)	482	
Stipulation of facts—consolidated cases	483	169
List of employees	484	169
List of employees	485	171
Exhibit "A"—Time sheet	487	173
Complaint ..... (omitted in printing)	493	
Exhibits:		
No. 1—Agreement ..... (omitted in printing)	500	
No. 2—Telegram ..... (omitted in printing)	508	
No. 3—Agreement ..... (omitted in printing)	508	
No. 6—List of employees working in tool room August 10, 1937	509	177
No. 7—Notice by tool supervisor	509	178
No. 8—Letter from Division of Labor, State of Indiana (omitted in printing)	510	
No. 10—Telegram ..... (omitted in printing)	511	
No. 12—Notice ..... (omitted in printing)	511	
No. 19—List of supervisory officials and set up men of Acme-Lees Division of Serrick Corp. (omitted in printing)	512	

	Original	Print
Proceedings before National Labor Relations Board—Continued		
Intervener's Exhibits:		
1—Constitution of International Association of Machinists	515	179
2—Map	635	298
4—Authorization for representation under National Labor Relations Act (omitted in printing)	637	
5—Application for membership (omitted in printing)	637	
6—Motion to dismiss (omitted in printing)	639	
Petitioner's Exhibit 1—Application for membership (omitted in printing)	640	
Intermediate report	641	299
Brief and/or exceptions	664	321
Letter from Nathan Witt, secretary	666	323
Decision of the National Labor Relations Board	667	324
Report of the Serrick Corporation (omitted in printing)	703	
Supplemental report of compliance	705	367
Letter from the Serrick Corporation	708	370
Certificate of the Secretary the National Labor Relations Board (omitted in printing)	709	
Petitioners' designation of record for printing (omitted in printing)	711	
Counter designation of record (omitted in printing)	717	
Addition to record per stipulation of counsel (omitted in printing)	728	
Minute entry of hearing	732	370
Opinion, Rutledge, J.	733	371
Dissenting opinion, Groner, J.	753	401
Judgment	756	405
Designation of record	757	406
Clerk's certificate (omitted in printing)	758	
Stipulations as to transcript of record	759	406
Order allowing certiorari	768	411

BLANK PAGE

[fol. 1] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, APRIL TERM, 1938

No. 7258

INTERNATIONAL ASSOCIATION OF MACHINISTS, TOOL AND DIE MAKERS LODGE No. 35, Affiliated with the International Association of Machinists, and Production Lodge No. 1200, Affiliated with the International Association of Machinists, Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

PETITION TO REVIEW AND SET ASIDE ORDER OF NATIONAL LABOR RELATIONS BOARD DATED JULY 27TH, 1938—Filed September 29, 1938

The petition of International Association of Machinists, Tool and Die Makers Lodge No. 35 affiliated with the International Association of Machinists, and Production Lodge No. 1200 affiliated with International Association of Machinists, respectfully shows:

1. That the Serrick Corporation, hereinafter referred to as the "Company" is an Ohio corporation operating a plant at Muncie, Indiana, and is engaged in the business of manufacturing bolts and screws, automobile moldings, refrigerator parts, and Stenotype machines.

2. That the respondent, National Labor Relations Board, hereinafter designated the "Board" is a government agency organized under an Act of Congress known as the National Labor Relations Act (49 Stat. 449).

[fol. 2] 3. That the United Automobile Workers, hereinafter called the "U. A. W.", is a labor organization affiliated with the Committee for Industrial Organization.

4. That the petitioner, International Association of Machinists is a labor organization affiliated with the American Federation of Labor, and is herein referred to as "I. A. M."

5. That the petitioner, Tool and Die Makers Lodge No. 35 is a labor organization affiliated with and chartered by

the International Association of Machinists, which admit to membership employees in the tool room of the Company's Muncie plant.

6. That the petitioner, Production Lodge No. 1200, is a labor organization affiliated with and chartered by the International Association of Machinists, which admits to membership all production employees of the Company's Muncie plant except the buffers and polishers, tool and die makers, and supervisory and clerical employees.

7. That on August 6th, 1937, said company and the petitioner Tool and Die Makers Lodge No. 35 entered into a closed shop contract in respect to rates of pay, hours of work and conditions of employment of employees in the tool room department of the Company's Muncie plant; that said contract was entered into by the said Tool and Die Makers Lodge No. 35 at a time when said Lodge No. 35 represented a majority of the employees in the tool room of the Company and said contract was authorized by said majority and was otherwise made in the manner authorized by law.

8. That upon charges filed by the U. A. W. the said Board issued its complaint dated October 5th, 1937, against the Company at Muncie, Indiana, alleging that the said Company had engaged in and was engaging in unfair labor practices respecting commerce at its Muncie plant within the meaning of Section 8 (1), (2), (3) and (5) of the said National Labor Relations Act.

9. That prior thereto, on August 16th, 1937, the said U. A. W. had filed a petition with the Regional Director for the Eleventh Region alleging that a question affecting commerce had arisen concerning representation of the production employees of the said Company in its Muncie plant and requesting investigation and certification pursuant to Section 9 (c) of the Act, and on September 27th, 1937, an [fol. 3] amended petition enlarging upon the previously claimed unit so as to include the tool room employees. That subsequent thereto the two aforereferred to cases were consolidated for hearing pursuant to authority granted by the said Act. That said consolidated cases bear the official title: "In the Matter of The Serrick Corporation and International Union, United Automobile Workers of America, Local No. 459, Cases Nos. C-460 and R-604."

10. That subsequent thereto, on October 14th, 1937, the I. A. M., pursuant to request, was permitted to intervene for the purpose of presenting evidence with respect to the designation of the I. A. M., as representative of the company's employees and with respect to the question of appropriate bargaining unit or units in its said Muncie plant, and for the purpose of preserving and maintaining its lawful interests.

11. That pursuant to notice a joint hearing on the complaint and petition was held in Muncie, Indiana, from October 18th, 1937, through November 15th, 1937, before the trial examiner duly designated by the Board.

12. That on March 4th, 1938, the trial examiner filed his intermediate report in which he found that the said company had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Sections 2, 6, and 7 of said Act, and has not engaged in and was not engaging in unfair labor practices within the meaning of Section 8 (2) and (5) of said Act; that the said closed shop contract between the I. A. M. and the company was valid and binding in every respect.

13. That thereafter the U. A. W. filed exceptions to adverse portions of the said intermediate report, and the case was transferred to the National Labor Relations Board at Washington for decision.

14. That prior to the decision of the Board it was notified of the existing facts and that petitioners represented a majority of the employees in the respective units; that copies of such notices are hereto annexed and marked "Exhibit B" and "Exhibit C".

15. That on the 27th day of July, 1938, said Board issued its findings of fact, conclusions of law, opinion and order, a copy of which is hereto attached and marked "Exhibit D".

[fol. 4] 16. That under and by virtue of the National Labor Relations Act, Section 10 (f) thereof, this Court has jurisdiction to hear this appeal from said decision and order.

17. That the said decision and order sustained the exceptions of the said U. A. W. to the intermediate report in

most respects. That among other things the said Board found that the closed shop contract entered into by the company with the petitioners International Association of Machinists and Tool and Die Makers Lodge No. 35 was made with a labor organization assisted by unfair labor practices; that the said I. A. M. did not represent an uncoerced majority of employees in the tool room at the time of the execution of the said contract, and that the membership in the said I. A. M., had been assisted by activities of employer's minor supervisory employees, who were members of or eligible to membership in said organization, and that accordingly the said Board held such contract to be unlawful and in violation of said Act and ordered said company to refrain from giving effect to the same.

18. That said Board further held and found that the single appropriate unit in said Muncie plant was a "plant unit" consisting of all the production employees of the said company including the employees in the tool room of said company, but excluding buffers and polishers and supervisory and office employees, in spite of the fact that the said tool room employees were found by the Board to be historically and in fact a well defined craft group. That the said "plant unit" was held appropriate for the alleged reason that the said petitioner, I. A. M. at the same time that it was organizing the tool room under said Tool and Die Makers Lodge No. 35 had organized the production employees of the said company under Production Lodge 1200 and for the further reason that free choice of the majority of the employees in the tool room department had been influenced by the aforesaid conduct of the employer. That the said Board further held that the said U. A. W. had a majority membership as of August 10th, 1937, among the employees in said appropriate unit, and accordingly certified the said U. A. W. as the exclusive representative of the employees of the Company in said unit. That said certification was made in spite of the fact that the said petitioners had introduced evidence of a substantial change in [fol. 5] affiliation of the employees in the production unit subsequent to said date of August 10th, 1937, and existent as of the time of said hearings in this proceeding, and had requested an election in spite of the fact that an election was expected and contemplated by the parties to this proceeding, and in spite of the fact that the said U. A. W. had

entered into a written agreement with the said company dated September 3rd, 1937, under the auspices of Judge Guthrie of the Delaware County Circuit Court, State of Indiana, in settlement of a certain court proceeding before the said Judge Guthrie, brought to enjoin a strike instituted by the U. A. W. during the pendency of these proceedings, in which said agreement the said U. A. W. had agreed to return its members to work at the Serrick Muncie plant and to maintain the status quo at said plant pending the holding of an election by the respondent Board.

19. That the petitioners are aggrieved by said order of the Board in the respects aforementioned for the reason that their lawful contract has been illegally invalidated, and for the reason that they have been denied the right to seek to organize the skilled workers into one local lodge and the production workers into a separate local lodge, and for the further reason that they have been unlawfully deprived of the right to represent the skilled workers eligible to membership in their local and to represent the production workers eligible to membership in their local by reason of the certification of the U. A. W. as the exclusive bargaining agent for all the workers in said plant exclusive of the buffers and polishers and clerical and supervisory employees; and for the further reason that petitioners have been deprived of the right to effectively organize among said employees in the manner and form as provided for in their rules and constitution.

20. That the said decision and order made by said respondent Board in the respects as aforestated are erroneous and contrary to the law and contrary to the purpose, language and intent of the National Labor Relations Act. That said findings of fact in respect to employer interference or coercion among its tool room employees are contrary to law without competent, credible or substantial evidence to support them, and that in any event said conduct of said com- [fol. 6] pany's employees does not constitute interference, coercion or intimidation by the employer within the meaning of the term as used in said Act. That said findings of fact and conclusions of law in respect to such alleged interference and coercion of said Company among its tool room employees are unsupported by credible or substantial evidence, and are contrary to the spirit, purpose and language of the said National Labor Relations Act.

21. That the said decision and order invalidating the said I. A. M. contract is unlawful, unsupported by any competent credible or substantial evidence, and further is contrary to law and contrary to the language and intent of said National Labor Relations Act and deprives petitioner of valuable property rights without due process of law.

22. That the said order and decision in respect to the establishment of the appropriate unit consisting of the entire plant, excluding the buffers and polishers, as a separate unit, and the certification of the said U. A. W. as the exclusive representative of all employees in said unit without an election and without other credible evidence to substantiate that a majority of said employees desire the U. A. W. as its bargaining representative as of the time certification was made, and requiring that said respondent company bargain with said U. A. W. as the exclusive representative, are contrary to the facts and evidence, contrary to law, arbitrary, prejudicial, and an abuse of discretion. That the aforesaid reasons for establishing the said unit are unsupported by the facts and evidence, and are contrary to law, contrary to the spirit, purpose and language of the said National Labor Relations Act; that by said decision and order in respect to establishing said unit the petitioners are unlawfully denied the right to organize the skilled workers and the production workers into separate local unions; that the said decision and order deprives the petitioners of valuable property rights without due process of law and it is beyond the power of said respondent Board as set forth in the said National Labor Relations Act.

Wherefore your petitioners pray:

(a) That a certified copy hereof be forthwith served according to law, upon the respondent National Labor Relations Board;

[fol. 7] (b) That the respondent, National Labor Relations Board may be required in conformity with law, to certify to this Honorable Court a transcript of the record in the proceedings wherein said order was entered, including the testimony, evidence and exhibits taken, the pleadings, the findings, conclusions and order of said respondent;

(c) That said proceedings, findings, conclusions and order be reviewed by this Honorable Court; that the said

order, insofar as it attempts to invalidate said contract dated August 6th, 1937, and insofar as it attempts to require said respondent company to deal with the said respondent U. A. W. as the exclusive bargaining agent for all the employees of the said respondent company excluding buffers and polishers and supervisory and clerical employees be set aside, vacated and annulled; and that the said I. A. M. contract be re-established and petitioners certified in accordance with law as the bargaining representative of the skilled workers referred to in the contract hereinbefore mentioned; and that appropriate units consisting of tool room employees be established, and another appropriate unit consisting of all other production workers excluding buffers and polishers, and clerical and supervisory employees be established, and an election be ordered in the latter (production) unit.

(d) That this Honorable Court exercise its jurisdiction over the parties and subject matter of this petition and grant to the petitioners such other and further relief in the premises as the rights and equities of the cause may require.

(e) And for such other and further relief in the premises as to the Court may seem meet.

Dated this 27th day of September, 1938.

Joseph A. Padway, Herbert S. Thatcher, Counsel for Petitioners, 321 Tower Building, 14th & K Streets, NW, Washington, D. C.

Copy received Sept. 29, 1938.

(Signed) Robert B. Watts, Assoc. Gen. Counsel, N. L. R. B.

[fol. 8] *Duly sworn to by A. O. Wharton. Jurat omitted in printing.*

EXHIBIT "A" TO PETITION

Agreement

Whereas, the parties hereto desire to establish standards of hours of labor, minimum rates of pay, and other conditions under which the employees shall work for the employers during the term of this agreement and tend to regu-

late the mutual relationship between the parties hereto with a view to securing harmonious cooperation between them.

Whereas, the employer agrees to recognize Tool and Die Makers Lodge #35 of the International Association of Machinists affiliated with the American Federation of Labor as the sole bargaining agency for all the employees in their Tool Room of the Muncie plant.

Therefore, this agreement entered into this 6th day of August, 1937, by and between the Acme Machine Products and John Lees Division of the Serrick Corporation of Muncie, Indiana, the parties of the first part, the employer, and the Tool and Die Makers Lodge #35 party of the second part, the employees shall be in effect when signed until the 31st day of July, 1938, and thereafter until a new agreement has been signed.

[fol. 9] Witnesseth: that in consideration of the mutual performance in good faith by both parties to this agreement individually and collectively the said parties do hereby agree with each other as follows:

Article 1

That the work week for all employees covered by this agreement shall be eight (8) consecutive hours per day excluding lunch periods, from Monday through Friday inclusive, and four (4) hours on Saturday of a forty-four (44) hour week. The starting time shall be mutually agreed upon between the company and the committee. Where second and third shifts are employed they will commence working immediately upon the termination of the first and second tricks. It is agreed by both parties to this agreement, if there is any Federal law passed regulating the hours below those stipulated in this article, then the hours will meet the Federal law.

Article 2

The minimum rates of pay for the classifications of the following shall be:

Tool and die makers	$1.00 per hour
Grinders	.95 per hour
Lathe Operators	.80 per hour
Tool Heat Treaters	.80 per hour
Machine Repair	.75 per hour
Thread Mills	.65 per hour
Helpers	.60 per hour

Article 3

All time in excess of eight (8) hours per day or four (4) hours on Saturday shall be considered overtime and shall be paid for one and one-half times the basic rate of pay. All time on Sundays and the following holidays—New Years Day, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, shall be overtime and shall be paid for at two times the basic rate of pay.

Article 4

At the option of the employer one apprentice for each shop and one additional apprentice for each ten (10) jour- [fol. 10] neymen or a specialist may be employed. Apprentices shall be between the ages of sixteen (16) and twenty-one (21).

Apprentices shall be taught all branches of the trade, foremen and journeymen members to furnish the necessary information. If, with the first six (6) months, the apprentice shows no ability to learn the trade, he shall be dismissed from the services of the company.

Apprentices shall serve four years or its equal 8000 hours, based on a 44 hour week and they shall in no case leave the services of the company, without just and sufficient cause. At the expiration of the fourth year, apprentices shall receive the minimum rate of wages paid to journeymen. Wages of apprentices shall be as follows: First thousand hours at the rate of 45c per hour. Second thousand hours at the rate of 50c per hour. Third thousand hours at 55c per hour. Fourth thousand hours at 60c per hour. Fifth thousand hours at 65c per hour. Sixth thousand hours at 70c per hour. Seventh thousand hours at 75c per hour. Eighth thousand hours at 80c per hour.

Article 5

It is agreed that all employees covered by this agreement shall be members in good standing in their organization. If additional help is required the employer may consult with the Secretary of said organization or the shop committee who will offer their services in supplying this help, but in the event that they are unable to do so, then the employer shall have the right to hire such additional help as he may require, but after a trial period of thirty (30) days, it will be necessary for said new employees to become members of the organization.

Article 6

That there shall be no discrimination of any kind against members of the organization by foremen, supervisors, or any other persons in the employ of employers.

Article 7

There shall be a shop committee elected by the local organization which will consist of employees of the companys tool-room who shall be recognized as representatives [fol. 11] to handle all grievances that may arise. Should the shop committee and the employer or the proper officials of the employer fail to settle any dispute, the matter shall be referred to higher officials of the respective organizations.

That during the life of this agreement no strike shall be caused or sanctioned by the Union, and no lockout shall be entered upon by the employer, until every peaceable means of settlement of difficulties shall have been tried.

Article 8

That working conditions in the shop of the employer shall comply with the health provisions of both the Department of Health and the Department of Labor of the State of Indiana. Where such conditions are not specifically covered by legislation, they shall be presented to the management, for adjustment according to procedure outlined in Article 7.

Article 9

That the employers shall keep posted in a conspicuous place, accessible to all employees, full copies of this agreement.

This agreement shall become binding upon the signature hereto, and become effective immediately.

Agreed upon this 6th day of August, 1937.

Tool & Die Makers Lodge #35 of the I. A. of M. C. G. Shock, Pres.; Sterl Huber, Sec.-Treasurer; Moses M. Byroad, Com. For the International Assoc. of Machinists. C. F. McDonald.

The Acme Machine Products and John-Lees Division of the Serrick Corporation, Muncie, Indiana. By S. D. Murphy, V. Pres.

[fol. 12] EXHIBIT "B" TO PETITION

International Association of Machinists, Washington, D. C.

(letterhead)

11-A-30

Washington, D. C., July 23, 1938

Subj: Serrick Corporation, N. L. R. B. Case R-604

Mr. Nathan Witt, Secretary
National Labor Relations Board,
Shoreham Bldg.,
Washington, D. C.

DEAR MR. WITT:

As mentioned in my telegram of July 21, I am enclosing herewith an affidavit with regard to the above mentioned case for the purpose of your record on said case.

Very truly yours, C. F. McDonald, Grand Lodge Representative.

Now comes Clint F. McDonald of 2937 Plaza Drive, Fort Wayne in Allen County, Indiana and deposes and says as follows:

That he is a Grand Lodge Representative of the International Association of Machinists and that he is acquainted with and knows the production employees employed by the Acme-Lees Division of the Serrick Corporation of Muncie, Indiana, and that any previous evidence to the contrary notwithstanding, that a large majority of the production employees employed by said Company are members of Lodge No. 1200 of the International Association of Machinists, and have through such membership, expressed their desires to be represented for collective bargaining purposes by the International Association of Machinists. [fol. 13] He further deposes and states that the above information is true and correct to the best of his knowledge and belief.

——— ———.

Subscribed and sworn to before me this 23rd day of July, 1938 at Washington, D. C.

——— ———.

My Commission expires ——— —, ———.

EXHIBIT "C" TO PETITION

July 22, 1938.

Mr. Nathan Witt, Secretary, National Labor Relations Board, Shoreham Building, Washington, D. C.

In re: Case No. XI-C-170 and Case No. R-604. In the Matter of Serrick Corporation and International Union United Automobile Workers of America, Local 459, and Others

DEAR SIR:

A situation has arisen in the above cases which calls for immediate action on the part of the Board. As your records will indicate, the above cases were duly filed with the Board. A hearing was had, and except for an intermediate report which was handed down February 28th, 1938, there has been no decision in the above matter. A strike arose in August, 1937. As a result of this strike proceedings were commenced in the Circuit Court of Delaware County, Indiana. The proceedings came before Judge Guthrie who mediated between the parties and procured an agreement whereby the workers would return to work and all interested parties would abide by the result of an election in respect to recognition of the bargaining agent, as follows:

"It is agreed that the plant of the plaintiff company shall be permitted to operate without interruption on the part of any person or persons and the strike now in progress shall be suspended pending an election to be held at such time and place as the Labor Relations Board may designate."

[fol. 14] The election has never been had. The representation case has never been decided. Because of the long delay between the time the case was commenced and the present time uneasiness arose among some of the employees. There has been a shifting of membership from one organization to the other; the status has frequently changed. However, there has been no agreement by the parties rescinding the agreement entered into before Judge Guthrie that an election will be held.

On July the 6th, 1938, at the instance of a small group of workers the gates at the plant were chained and padlocked, a picket line was thrown around the plant, and production was prevented. Thereupon efforts to re-open the plant were

commenced by a number of persons, and on July the 15th, 1938, a purported agreement was entered into by the company and Local 459 Automobile Workers of America. This agreement was entered into without the consent of Local No. 1200, International Association of Machinists, which is a party to the original proceedings and has been a party to any controversy or proceedings affecting the Serrick plant.

Because of this agreement the employees of the company who are A. F. of L. members, skilled craft and production, refused to return to work. The plant is therefore shut down. The A. F. of L. represents 100% of the skilled craft workers, that is, the craft workers are 100% members of the A. F. of L. Unions, and the production workers are approximately 90% affiliated with the A. F. of L. The A. F. of L. members and their organizations have religiously respected the agreement entered into before Judge Guthrie and continue to do so and will do so until the Board holds the election, but the A. F. of L. cannot be expected to do so when with the consent of the agents of the Board the previous agreements are breached, violated and cast aside and the company is advised to violate the law and recognize a group as the exclusive bargaining agency who have no right to be so recognized and cannot be recognized under the National Labor Relations Act. I have it on the authority of Mr. L. F. Serrick that Mr. Barney Maynard, President of the United Automobile Workers, said at a meeting at which [fol. 15] the July 15th, 1938 contract was entered into: To hell with the courts; to hell with the National Labor Relations Board. We have control of the plant and we are going to keep control of it unless settlement is made on our own terms."

One can forgive the local public authorities and citizens promoting an agreement of the character entered into July the 15th, 1938, but one can hardly overlook the activities of representatives connected with the Regional Labor Board or with the Department of Conciliation of the Department of Labor in fostering the agreement of July the 15th and advising the employer to execute it. Mr. Watson, who is associated with the Regional Labor Board, Eleventh District, Indianapolis, Indiana, and Mr. Friel of the Department of Labor, took an active part in the preparation of the agreement. Among other things the agreement usurps jurisdiction of the National Labor Relations Board and decides the most important subject pending before the Board

for decision. The agreement provides that the "company recognizes the Union (Local No. 459-U. A. W. A.) as the sole bargaining agent for all of its employees on matters of wages and conditions of work." The foregoing applies to production workers and this recognition is to continue for a period of sixty days. If the decision is not handed down by the Board within the sixty day period then the agreement provides that "the company will negotiate with the International Union of United Automobile Workers of America, Local 459 thereof, on matters covered by this agreement." I wonder, is this an inference on the part of Mr. Watson, one of your representatives, that the Board hasn't acted with expedition, and an inference that it may not act with expedition in the future and therefore he may advise the employer to take the matter into his own hands and enter into an agreement recognizing one party to the proceedings as the sole bargaining agency regardless of the jurisdiction of the National Labor Relations Board?

As Counsel for the International Association of Machinists I am directed to enter a vigorous protest respecting the activities of Mr. Watson of the Regional Board and Mr. Friel of the Department of Labor in advising the employer to enter into an agreement recognizing one party to the pro-
[fol. 16] ceedings in the face of the pending proceedings. We feel that it is within your jurisdiction to advise the employer that it shall disregard this agreement, that it shall post notices immediately that it has no force and effect and that it shall be obliged to await the decision of the Board respecting representation.

We feel justified in making this request of the Board because the employer admits that in February, 1938, Mr. McDonald, representative of the Machinists Union, informed the officials of the company that his organization represented a majority of the production workers. If you will make inquiry of the employer you will find that this fact will be admitted. It was well known to all persons connected with this controversy for some time prior to July the 15th, 1938, that the International Association of Machinists, Local 1200, claimed a majority of the workers as its members. The agreement of July 15th, 1938, was entered into in the absence of Mr. McDonald and without his authority or consent. We have claimed and still claim to have a majority of the production workers as members of Local 1200 International Association of Machinists

The agreement refers to a stipulation entered into by various parties including Mr. McDonald representing the International Association of Machinists respecting membership cards claimed by the CIO and by the A. F. of L. So that there may be no misunderstanding respecting the stipulation, that was done for the purpose of avoiding checks, re-checks and many days of delay. Mr. McDonald stipulated that the CIO would produce the cards it claims, and likewise stipulated that he would produce the cards he claims. However, that was not taken as determinative of the issues respecting representation. All sides claimed that if a vote were taken the workers would vote for their particular organization. That is, the CIO claimed that if a vote were taken they would secure a majority of the workers. The Machinists claimed that if a vote were taken the majority of the workers would vote for the A. F. of L. In other words, each side doubted that the other had procured its membership in proper form and it was for that reason that regardless of the number of cards presented by either side the election was a means of settling the controversy respecting rep-
[fol. 17] resentation. The parties did not fear entering into that stipulation because of the agreement made before Judge Guthrie that an election would be resorted to and held as a means of determining the bargaining agency.

We therefore ask that in addition to an immediate order setting aside the agreement of July 15th, 1938, to promptly order an election and determine by the process of an election which organization the employees want to represent them.

We should like to be advised what action the Board will take respecting our request.

A copy of this letter is being sent to Dr. J. B. Steelman, Director of the Bureau of Conciliation, Department of Labor, Washington, D. C.

Very truly yours, (signed) Joseph A. Padway, Counsel, American Federation of Labor.

[File endorsement omitted.]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 7258

[Title omitted]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION TO REVIEW AND SET ASIDE ORDER OF THE BOARD—Filed November 17, 1938

To, the Honorable, The Judges of the United States Court of Appeals for the District of Columbia:

Comes now the National Labor Relations Board (hereinafter referred to as the Board), by J. Warren Madden, [fol. 18] Chairman, Edwin S. Smith, Member, and Donald Wakefield Smith, Member, and, pursuant to the National Labor Relations Act (49 Stat. 449, c. 372, 29 U. S. C., Supp. II, Title 29, sec. 151, *et seq.*) files its answer to the petition to review and set aside the order of the Board dated July 27, 1938.

1. The Board admits the allegations contained in paragraphs 1, 2, 3, 4, 5, and 6 of the petition to review, except that it alleges the correct name of the labor organization referred to in paragraph 3 of the petition to review is International Union, United Automobile Workers of America, and except that it alleges that Tool and Die Makers Lodge No. 35 and Production Lodge No. 1200, referred to in paragraphs 5 and 6 of the petition to review, are not separate labor organizations and prays reference to the certified transcript of the record before the Board, filed in this Court, for a full statement of the organizational structure and relationships of said lodges.

2. Answering paragraph 7 of the petition to review, the Board denies that the contract therein referred to was made in the manner authorized by law and alleges that said contract was and is invalid and contrary to law. The Board neither admits nor denies the remaining allegations of said paragraph for the reason that they purport to characterize facts and circumstances at issue and the subject of testimony and decision in the proceeding before the Board (to the certified record of which, now on file in this Court, reference is hereby made), and do not warrant or require answer herein.

3. Answering paragraphs 8, 9, 10, 11, 12, 13, 15 and 16 of the petition to review, the Board prays reference to certified record of the entire proceedings had before the Board for a full and accurate description thereof, including the provisions of the charges, the complaint of the Board, the report of the Trial Examiner, exceptions thereto, the findings of fact, conclusions of law, and order of the Board, and all other proceedings had.

4. Answering paragraph 14 of the petition to review, the Board states that the purported notifications of facts [fol. 19] therein referred to were not presented to the Board in any manner authorized by the National Labor Relations Act or by the Rules and Regulations of the Board, were not properly before the Board, and were and are without any legal effect in the proceeding before the Board or in this proceeding.

5. Answering paragraph 17 of the petition to review, the Board denies that the findings stated by petitioners as being the bases of the Board's order that the contract between Tool and Die Makers Lodge No. 35 and the company should not be given effect, are the only bases for said order; and the Board admits the other allegations contained in paragraph 17.

6. Answering paragraph 18 of the petition to review, the Board denies that it found the tool room employees to be historically and in fact a well defined craft group; the Board further denies that the reasons stated by petitioners as being the reasons for the Board's finding of the appropriate unit were the only reasons for said finding; the Board further denies that the parties to this proceeding expected or contemplated an election; the Board further denies that petitioners requested an election; and the Board admits the other allegations contained in paragraph 18.

7. Answering paragraphs 19, 20, 21, and 22 of the petition to review, the Board denies each and every allegation therein contained.

Wherefore, having duly answered each and every allegation contained in the petition to review, the Board prays this Honorable Court that the said petition, in so far as it prays that the Board's order be set aside, vacated or annul-ed, or in so far as it prays for any separate affirmative order of this Honorable Court, be denied.

Pursuant to Section 10 (f) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record of the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact and conclusions of law, and order of the Board. The Board further prays this Honorable Court [fol. 20] that it cause notice of the filing of this answer to be served upon petitioners.

(S.) J. Warren Madden, Chairman; (S.) Edwin S. Smith, Member; (S.) Donald Wakefield Smith, Member, National Labor Relations Board.

Dated at Washington, D. C., this 10th day of November 1938.

(S.) Charles Fahy, General Counsel.

[File endorsement omitted.]

Duly sworn to by J. Warren Madden et al. Jurat omitted in printing.

[fols. 21-31] BEFORE THE NATIONAL LABOR RELATIONS BOARD

Eleventh Region

Case No. XI-C-170

In the Matter of

THE SERRICK CORPORATION

and

UNITED AUTOMOBILE WORKERS OF AMERICA, Local No. 459

Case No. XI-R-65

In the Matter of

ACME-LEES COMPANY DIVISION OF THE SERRICK CORPORATION

and

UNITED AUTOMOBILE WORKERS OF AMERICA, Local No. 459

City Council Chamber, City Hall,
East Jackson Street,
Muncie, Indiana,
Monday, October 18, 1937.

The above entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m.

Before Alvin J. Rockwell, Trial Examiner

APPEARANCES

George Rose, and Colonel C. Sawyer, Attorneys, on behalf of the National Labor Relations Board.

Messrs. White & Haymond, by Walter D. White, and William T. Haymond, 108 East Washington Street, Muncie, Indiana, on behalf of Respondent, The Serrick Corporation, Acme-Lees Company Division.

Paul S. Brady, Muncie, Indiana, on behalf of the United Automobile Workers of America, Local No. 459.

H. T. Hamilton, and C. F. McDonald, Machinists Building, Washington, D. C., on behalf of the Intervener, International Association of Machinists.

* * * * * * *

[fols. 32-33] RUDOLPH KEIL a witness called by and on behalf of the National Labor Relations Board, having been duly sworn, was examined and testified as follows:

Direct examination:

* * * * * * *

[fol. 34] Q. Can you tell us at what time this solicitation by Moses Birod took place?

A. What time it took place?

Q. Yes.

A. You mean, during the day, week, or approximately?

Q. Well, the day of the month.

A. Well, I will have to think. It was within three weeks prior to the time I was discharged.

Q. What did you say? I didn't hear that.

A. Within three weeks of the time I was discharged. That was August 13th that I was discharged, and it was within the three weeks prior to that.

Q. And was that solicitation made on company time?

A. Yes.

Q. Do you know whether the foreman was there at that time?

A. Yes, the foreman was at his desk.

Q. How many times did Moses Birod solicit?

A. Oh, I would say a half dozen times.

Q. Did you notice whether Moses Birod spent much time there doing that work?

A. The last week prior to August 13th I think he spent seventy-five or eighty per cent of his time.

Q. And was Moses Birod employed in the tool room?

A. Yes, I happened to be working with him, and he was working with me on a job, and he was pretty hard to find the last three or four days.

By Trial Examiner Rockwell:

Q. The last three of four days you worked at the plant?

A. Yes; well, we will say the first three days of the week that I was discharged.

By Mr. Rose:

Q. Now, going back to the—excuse me, were you finished?

A. The first three days of the week that he was discharged he and I were working on the same job.

Q. And you were discharged August 13th?

A. Yes.

Trial Examiner Rockwell: What was the last question? I can't hear you.

Mr. Rose: I say: You were discharged August 13th? I just wanted to fix the time.

Trial Examiner Rockwell: And the answer was?

The Witness: Yes.

[fols. 35-36] By Mr. Rose:

Q. Now, you have stated that Moses Birod had solicited your membership?

A. Rather persistently.

Q. In what organization?

A. I don't know the name of it. I believe it is the Tool and Die Makers Union, and it is affiliated with the A. F. of L. I am not certain about that name at all, but I do know it was the A. F. of L. affiliate.

* * * * * * *

[fol. 37] Q. Had Moses Birod done any of the soliciting on behalf of the A. F. of L. at that time?

A. Moses Birod tried to solicit some memberships in the C. I. O. when he first came in there, but he, for some reason or other, dropped the C. I. O. and became a sort of organizer for the A. F. of L. affiliate. That was, well, that was prior to the time that we were called into the meeting. He was soliciting membership in the A. F. of L. at that time, at the time I was called in that meeting.

Q. Were his activities increased after that time?

A. Yes, he became very active in the interests of the A. F. of L.

Q. Was all of Moses Birod's solicitation on behalf of the A. F. of L. on company time?

A. Yes, during working hours.

Q. Do you have any information as to when that contract was actually signed?

A. Do I have any information about what?

Q. When that contract, which was posted by the machinists group, when that was actually signed?

A. I didn't see it signed. All I know is what I heard about the signing.

Q. Yes. Now, before you were fired, were you solicited again for membership in the A. F. of L?

A. The same day.

[fol. 38] Q. And can you tell us the conversation you had?

A. Mr. Birod came to me and told me it was about the last chance. He said we probably would lose our jobs or I would. There was some one else there, but I don't recall who it was; that we would lose our jobs if we didn't sign up with the A. F. of L., because they were going to get a contract signed.

Q. Keep your voice up. Now, did your foreman, McCoy, come to you about it?

A. About what?

Q. About your joining the A. F. of L.?

A. No, he didn't mention anything to me.

Q. Now, tell us the circumstances of your being fired.

A. The day that I was fired Birod came around with a slip of paper and took down all the names of those who had refused to sign with the A. F. of L., for the A. F. of L. affiliate. He asked me if I was going to sign. He said, "This is about the last chance you will have." I said, "No, I didn't think I would." He went on to some one else and got their name, and later that morning I was called into the

office with Mr. Sharpe who at that time was a committeeman, I believe, for the C. I. O.

* * * * * * *

[fol. 39] FRANCIS WITMER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

* * * * * * *

[fol. 40] Q. And was your membership ever solicited in the Welfare Association?

A. Yes, it was on several occasions.

Q. Can you tell us when and by whom?

A. Mr. Harold Sharpe solicited my membership by handing me a form application, told me that it was a membership application for the Welfare Association, and if I intended to join it, sign it and return it, and if I didn't, return the blank.

I was also solicited by Walter Fouts on numerous occasions.

Q. By whom?

A. Walter Fouts and--pardon me.

Q. And what time of day did that occur?

A. Why most any time of day.

Q. Was it during working hours?

A. During working hours.

Q. And was your foreman present when this solicitation was made?

A. He was in the tool room.

Q. How far would you say he was from you?

A. Well, I would judge the distance at sixty feet.

Q. Did you see these solicitations made on other people?

A. Yes, I did.

[fol. 41] Q. Now, did you ever see any solicitation made on behalf of the Machinists?

A. Yes, I did.

Q. By whom?

A. By Moses Birod and Arthur Baker and Walter Fouts.

Q. And can you tell us when that took place.

A. I couldn't state the exact date.

Q. Well, approximately.

A. I might approximate the month. That happened the

latter part of July on through August up until the 13th, and after that I know nothing.

Q. Did these take place on company time?

A. Yes, they did.

Q. Do you know whether your foreman was present at that time?

A. He was in the tool room.

Q. Did you ever have a conversation with these men with regard to their attempts at soliciting your membership?

A. Yes.

Q. Can you tell us what those conversations were?

A. Walter Fouts called me to his bench one day and stated——

* * * * * * *

[fol. 42] A. Walter Fouts called me to his bench prior to the time that the A. F. of L. had started organizing, and told me that he had attempted to contact and did contact an A. F. of L. organizer who would come on from Indianapolis and would help them organize a local in Muncie, and after everything was ship-shape and under control, the organizer would go back to Indianapolis and the local in Muncie would have complete charge and operate the way they pleased.

He tried frequently to get me to sign an application after they had brought their applications in.

By Trial Examiner Rockwell:

Q. Now, this is later, I suppose?

A. After that one.

Q. You have finished that one conversation?

A. Finished that one conversation, and then on frequent dates he asked me if I would sign an application to join the A. F. of L., so that we could abolish any C. I. O. organization in the shop.

By Mr. Rose:

Q. Did these men work in the tool room?

A. They worked in the tool room. Walter Fouts was more or less an assistant foreman, in that he had certain machinists under—in his charge, who manufactured rolls for the rolling and molding departments, and he was also authorized to sign requisitions, and he also worked along with men who worked for him.

Q. He also worked along with the men?

A. He worked along with them, but he was in charge of that particular job.

Q. Do you know whether he had the right to hire or fire?

A. He had no right to hire or fire, but on frequent occasions he had the right to state whether a man was suitable for a particular job, or unsuitable.

Q. Do you remember any other conversations that you had with these men?

A. I remember that this Arthur Baker——

Q. Can you tell us when it took place?

A. It was during that same period. All these conversations took place during the months of July and August, and a gentleman, a fellow worker by the name of Arthur Baker approached me on numerous occasions and stated that the A. F. of L. organization was being carried on, and [fol. 43] that he was soliciting my membership and wanted me to sign an application, because I and a few others were key-men in the tool room, and that we were wanted more than some other members of the tool room, who were not supposed to be key-members—key-men in the tool room.

Q. Did Mr. McCoy ever take part in any of these conversations or was he present at any of them?

A. He never took part in any conversation, as far as I knew, and never questioned me in regards to any union or union affiliation.

Q. Do you know whether any dues were ever collected during working hours?

A. Yes, I do.

Q. For the Acme Welfare Association?

A. There were dues collected, not for the Acme Welfare Association, but for A. F. of L. memberships by Moses Birod. A certain percentage was paid down on the signature of an application, and then he collected the rest on payday at his bench.

Q. Now, can you tell us the circumstances of your discharge?

A. Well, I was approached very early in the morning on Friday, the 13th of August, by Moses Birod, who had a slip of paper in his hand. He had a list of names and asked me if I was going to join the A. F. of L.

I told him, "no," so he wrote my name down and told me that day would be my last day, since they had a closed shop, why, I would be through.

Q. Did you ever have any conversation with Mr. Lewis about your being discharged?

A. Yes, I did.

Q. Can you tell us about that?

Mr. White: Lewis, you say?

Mr. Rose: Lewis, yes.

A. While I was taking my tool chest to the front of the building and waiting for my pay check, I stopped in the cafeteria for a Coca Cola, and Mr. Lewis came in and wanted to know what was the matter.

I told him it looked like we were through.

He said, "What is the matter down there?"

I said, "Well, there is a lot of things the matter, a lot of discrimination, a lot of pressure put on persons to connect themselves with various organizations to bargain with the company, and some of the men had their jobs threatened," and I said, "Those conditions are not desirable to work under and no red blooded man will stand up and take it," [fol. 44] and he stated that we acted like a bunch of school boys, and I told him that if he was in an apron and in a tool room, he would act in the same manner.

That finished that conversation.

Q. Did you have any further conversation with any of the other company officials?

A. Not with any of the other company officials. Mr. Lewis came through the tool room one day while we were at work.

Q. When was this?

A. This was approximately one month before our discharge, as near as I can remember the time. He asked Mr. Sharpe—and me together, why we didn't join the A. F. of L., and we told him that we didn't care to, and he said, "Well," he said, "You should straighten things out and have one organization in here and run this things smooth."

He didn't mention, he first asked us on several occasions, asked me on several occasions about joining the Welfare Association, and then evidently when it failed, asked about the A. F. of L. That is the only conversation that I have had with officials concerning the organizations.

* * * * * * *

[fol. 45] Q. Now, there was considerable union activity of all kinds in that plant during working hours, during the months of June and July, wasn't there?

A. Yes, there was.

Q. The United Auto Workers were doing some soliciting during working hours, the A. F. of L. was doing some during working hours, and the Welfare Association?

A. In rotation, the Welfare Association started the ball rolling with a mass solicitation, and after that was started, the U. A. W. A. attempted it, but didn't have a lot of success during working hours, because we were closely watched by company officials, and after that started, then the A. F. of L. started solicitation and did it openly without any reprimands.

* * * * * * *

[fol. 46] Q. Now, these other people, Moses Birod and Jacobs and Baker, did they leave their work and go around talking at other places?

A. I can't answer for Mr. Jacobs, because I was on a different shift. Mr. Birod and Mr. Baker approached my bench on numerous occasions and did talk at my bench in regards to signing an application with the A. F. of L.

[fol. 47] Q. Were their benches near yours?

A. No, on the contrary, they were at the extreme ends of the room.

Q. Did you see them talking to other people in the same way?

A. I have, yes.

Q. And are you supposed to leave your bench and go around talking that way?

A. No, we weren't supposed to go around for the express purpose of talking. We were allowed full rein of the tool room, insofar as we left our bench for the purpose of using certain machinery that was spotted throughout the tool room.

Q. And if you did leave the room, or if you did leave your bench for any length of time, you were being paid for it, weren't you?

A. Surely.

Q. Now——

Mr. White: How is that?

Mr. Rose: I asked him if he left his bench for any length of time, if he was being paid for it.

By Mr. Rose:

Q. And if anybody else did that during working hours, they were being paid for it, weren't they?

Mr. White: Now, I object to that. The witness could not——

Trial Examiner Rockwell: Was that another way of asking him whether any of them were on piece work?

Mr. Rose: Well, I just wanted to show that these men were being paid while they were doing this soliciting.

By Mr. Rose:

Q. Well, do you know whether this existed?

A. Yes, I know from the time a person entered the tool room and was in an apron or without an apron, and working while he was in there, as a tool maker he was supposed to be working, and that I saw solicitation going on during that time.

Q. Now, were there two sections of the tool room?

A. There was two sections in the tool room. One part dealt with the tooling and maintenance of the Acme section, which manufactured automotive parts in the way of screws and bolts, and so forth, and the other section dealt with tooling and maintaining the molding division, or the John Lees Division.

Q. Now, was the same for-man over both sections?

A. The way I understand it, Mr. McCoy was general foreman over the entire tool room, which included both sections, with an assistant over the Acme section.

[fol. 48] Q. Do you know whether the majority of the men in the Acme Division were fired?

Mr. White: I think I will object to that question.

Trial Examiner Rockwell: A majority of the entire Acme Company?

Mr. Rose: No, the Acme Division of the tool room.

Trial Examiner Rockwell: Well, I will allow the question, if he knows. Go into that, whether he knows.

A. I can state the majority were fired. As a matter of fact, there were very few remaining on the Acme side of the tool room.

Mr. Rose: That is all.

Q. Now, you were always given liberty to go and come in the shop, you were never told by your foreman to get back to your work, or your machinery?

A. No, as a general rule, we didn't have to be told. We were on trouble throughout the shop on numerous occasions, had to try out dies and repair dies that were in operation, if they could be repaired in a machine.

Q. You frequently had to go from the tool room out into the production part of the plant?

A. During the productive season, we did. During the actual manufacture of the tool, of the building of the tool, we did not have a whole lot of occasion to visit other parts of the plant.

* * * * * * *

[fol. 49] By Mr. Rose:

Q. I have still another question I would like to ask you: Did this conversation which you related, which took place between you and Mr. Lewis, was that on August 6th, 1937?

A. On what date?

Q. On August 6th, the week before you were laid off?

A. You mean, the conversation that was held between Harold Sharpe and myself?

Q. Yes.

A. I couldn't state the exact date. That has been quite some time ago, but it wasn't so long before the time that I left.

Q. I don't think you stated this, and I would like to ask you a question: Did Mr. Lewis say anything about having signed with any organization?

A. He stated to Harold Sharpe and to me that he had joined the A. F. of L. Harold Sharpe asked him why he didn't join the C. I. O.

He said the A. F. of L. offered him more money.

Mr. Rose: That is all.

By Trial Examiner Rockwell:

Q. Who was it said that?

A. Who was it said that——

Q. That the A. F. of L.——

A. You mean the last——

Q. (continuing:) —had offered them more money?

A. John Lewis.

Q. John Lewis, the personnel employment manager?

A. The personnel manager.

Recross examination.

By Mr. White:

Q. Now, let's get that conversation. Mr. Lewis said what?

A. Mr. Lewis approached Harold Sharpe and me in the tool room during working hours and asked why we didn't join the A. F. of L.

[fols. 50-51] He stated that he had joined the A. F. of L., and Harold Sharpe asked him why he had joined the A. F. of L., and he said the A. F. of L. offered him more money.

By Trial Examiner Rockwell:

Q. This was before the date that you were discharged?

A. Yes, I don't know what date it was, but it was before that date.

By Mr. White:

Q. Well, now, was it a day or two days, or how long was it?

A. Well, now, it has been—it must have been a week or more before that time.

Q. A week or more?

A. A week or more before that time. I would state not more than two weeks before and not—I don't know, but I doubt whether it was less than a week before.

Q. He told you that he had already joined the A. F. of L.?

A. Yes.

Q. That is, you mean Mr. Lewis, the personnel director?

A. That is right.

* * * * * * *

[fol. 52] HAROLD SHARPE, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

* * * * * * *

[fol. 53] Q. Before it, yes.

A. Well, Mr. Lewis upon a certain date, I would say around the—between the 1st and 15th of July, approximately, met me in the front of the office or at the front of the plant on the inside of the plant, right near the office section, and handed me a group of Welfare Association cards to take to the tool room and pass around to the tool makers.

Q. Was this on company time?

A. Yes.
Q. And did you pass them out?
A. I did pass them out.
Q. On company time?
A. On company time.
Q. And were you paid for that time?
A. Yes.
Q. Were you paid for it by the company?
A. Yes, I was.
Q. I mean, you never received a separate check from the Acme Welfare Association?
A. No, sir.
Q. And do you know how long that took?
A. Well, to answer that question properly, I went to the tool room foreman, Mr. McCoy, and told him that I had these cards to pass out and I said, "And McCoy, in order that you know what I am doing, I am telling you that these are Welfare cards, and I am passing them out," and he said, "All right, Harold, go ahead."

I would say that that could have taken me around one hour and a half to two hours, to cover up the proceedings of the cards, that is, passing them out and taking them up.

Q. And what did you do with those cards?
A. Part of the cards were taken up on the same day; those [fol. 54] cards, whether they were signed or not, I didn't look at them myself, I gave those cards that was collected that day back to Mr. Lewis. Later I collected some remaining cards and gave them to a Mr. Walter Fouts, in the tool room.
Q. Who was he?
A. Well, he was in charge, whether he was an authorized supervisor of that department by the company or not, I do not know, but he was in charge of the roll department, as far as the maintenance of that individual department was concerned. I do know that he signed his own requisitions and looked after that particular end of the work.

* * * * * * *

Q. Do you know whether Mr. McCoy said anything about the C. I. O. to you at the time you were asked by Mr. Lewis to pass out those cards?
A. There was three of us in the tool room at that conversation, Mr. McCoy, and Mr. Joseph Bolander, the fore-

man on the first shift was present at that time when I went to Mr. McCoy with the cards. Mr. McCoy said, "Well, Harold, give Joe one, he will sign it right now, because he is not allowed to hire or fire."

Q. Joe?

A. Bolander, the foreman of the third shift. He signed a card and returned it to me. Mr. McCoy said that, "Well, we have got to do something; if the C. I. O. gets in here, this place will go to hell."

* * * * * * *

[fol. 55] Q. After you joined the Auto Workers, did you see any man in your department going around soliciting members?

A. I never saw a card of the U. A. W. A. in the tool room.

Q. Did you ever see anyone soliciting for any other or-

[fol. 56] ganization?

A. I did not see an American Federation of Labor card. I did not see a United Automobile Workers card in the tool room, other than the one that I had in my own pocket, prior to the date that I gave before, which might have been between the 18th and 23rd or 25th, but a Mr. Birod came to me in the men's restroom, and as it chanced, his hip pocket was sticking out, which I could see, as toolmakers have an apron on and do not wear coats. I said, "Mose, what have you got in your pocket to stick out?" He said, "That is A. F. of L. money, and it is all cash and paid up."

Q. Did he say anything further about soliciting memberships?

A. At that time a Mr. Shock and a Mr. Baker, also in the restroom, asked me if I was too far out on a limb, that I couldn't join the A. F. of L. And I said, "What do you mean, too far out on a limb?" And they said, "Well, just what we said, you haven't gone too far with anything else so you can't join the A. F. of L.?" I said, "Well, if it is any news to you fellows, I have joined the C. I. O." They said, "Well, that is fair enough." So that from that day on I had a terrible time.

Q. What do you mean "a terrible time"?

A. Well, they began to put the pressure on, that is, in factory man's slang, they put the pressure on you, put the heat on.

Q. Can you describe that to us?

A. Well, other than they kept looking at your bench and when you look around and see two or three talking, and they are looking over your way, and you merely by intuition have a feeling that you are the subject of conversation; and then there is certain obstacles in the tool room that do present themselves under pressure, that if you try to get a machine, that you can't get a machine, it is tied up, and it takes you longer to do your job than it does the other fellow, due to the fact you can't get to the machine, that certain fellows have got them tied up.

Q. Can you name any person that you saw talking that way?

A. Yes, I would say Mr. Fouts, Mr. Baker, Mr. Birod, Mr. Shock. I think that is about all.

Q. Did Mr. Birod make any statement about his soliciting for the A. F. of L.?

A. Yes.

Q. Tell us what it was.

A. When I passed out the Welfare Association cards, I [fol. 57] came to Mr. Birod. I had not known him very long, only a few days after he had come there from—well, I don't know where he come from, but I gave him a card and asked him—I did not ask him, I gave him a card and said, "This is a Welfare Association card, Mose. If you care to sign it, all right, and if you don't sign it, just return it to me," and he signed the card and gave it back to me. And later Mose Birod came to me and talked to me about the C. I. O.

Q. Do you know what those dates were?

A. That was after I had resigned as a committeeman of the Welfare Association, which would be after between—after the 8th or the 11th, and it would be between the 11th and the 18th or 23rd, because during the time I had resigned, and he came to me, that I do not join the U. A. W. A.

Q. Well, did Mr. Birod ever say anything to you about soliciting with the knowledge of the foreman?

A. He told me that, he said, "Mac knows what I am doing," and he said, "If he didn't, he would have fired me a long time ago."

Q. Did he say anything about the company being behind him?

A. I don't think—no, he did not make that statement to me.

Q. Now, what was he soliciting for then?

A. The American Federation of Labor.

Q. Do you know when that was, that he made that statement to you?

A. Other than to say that it would have been between the—I would say at some time between the 5th and the 13th day of August, some time between that time.

Q. Now, did you ever have a conversation with Mr. Lewis about the date of August 6th, 1937, in Frank Witmer's presence?

A. On or about that date, I think it was the 6th, Mr. Witmer and I were working, you might say, side by side on two machines, he on one and I on the other. Both of these machines were working automatically, the feeds were running, and Mr. Lewis came to us in the plant, in the tool room, and in a friendly greeting said, "Good morning, boys," and we said, "Good morning," and just what started the conversation, I don't remember, but he did ask us when we was going to join the A. F. of L. And I said, "Well, John, when are you going to join the C. I. O."? He said, [fols. 58-59] I have already went up and signed up with the A. F. of L., because there is more money in it."

• • • • • • •

[fol. 60] Q. Now, when you stated to Mr. White that you would like to work out there and that you could work out there as long as you would do what they tell you to do, whom do you mean by the use of the pronoun "they", in that remark "as long as you do what 'they' tell you to do"?

A. Well, it seems like there is some four or five employees in the tool room that are more or less ringleaders.

Q. Ringleaders in what?

A. Well, they claim to be specialized in certain classes of work, with which they have become acquainted, with a few years' experience before their coming here, and they tried to stay particularly with that type of work, die work.

Q. Who are they?

A. Mr. Fouts, Mr. Birod—I will not include him as a specialty man, but he was one of the ringleaders.

Q. Ringleaders in what?

A. The organization of the A. F. of L.

Q. Well then, is that the point you are wanting to make, that they were organizers of the A. F. of L.?

A. Yes.

Q. Is that your chief objection to them?

A. Well, not necessarily. They have came to me and asked me, several times, they said, "Sharpey, if you want to play ball, why, line up with us. You are going to have to play ball." Well, I said, "I have been playing ball for 25 years," and I was asked by that by Mr. Shock, if I was going to play ball, and then Mr. Baker retaliated and said along with Mr. Shock, confirming the statement, asked if I was too far out on a limb.

Q. Now, are they the same men that kept you from getting at the machines upon which you needed to work in the performance of your duties?

A. Well, I wouldn't go so far as to name any one personal man. That can be, you know, in a factory that can be grouped among a group of men, to work out so that suspicion can't be cast on one person.

Q. But, at any rate, it did occur?

A. It did occur.

ROBERT BUNCH a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

* * * * * * *

[fol. 61] Q. And who is Cecil Shock?

A. Well, he is one of the toolmakers out there, and he acts as assistant foreman when Mac is out.

Q. Tell us what conversation you had with him.

A. Well, about the only thing he said to me was Murphy made the statement that before the C. I. O. would come in there, they would shut the plant down.

* * * * * * *

[fols. 62-63] CHESTER KIRBY, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct examination.

* * * * * * *

[fol. 64] Q. Was your membership in the Welfare Association ever solicited in the past few months?

A. Yes.

Q. Prior to your dismissal?

A. Yes, Harold Sharpe come around one day there in the latter part of July with a card during working hours and asked me if I would care to sign it, and I told him that I was too busy and didn't have time, and he just kept it and went on away.

Q. Did anyone else ever solicit your membership?

A. I believe, about the latter part of June, Walter Fouts come around with a paper and asked me to sign it, to join the Welfare Association, and I told him that I didn't believe that I cared to.

Q. Did Moses Birod ever solicit your membership?

A. Not in the Welfare Association, but he did in the A. F. of L.

Q. Well, did you have any further contact with the Acme Welfare Association?

A. No.

Q. Now, when did you join the Auto Workers?

A. About the 9th of June.

Q. And did you attend their meetings?

A. Well, I never attended any meetings until around the first of August.

Q. Now, you just stated that Moses Birod solicited your membership for the A. F. of L., the Machinists group?

A. Yes.

Q. And can you tell us the circumstances of that?

A. I beg your pardon?

Q. Can you tell us any surrounding circumstances of that solicitation?

A. Well, I was back working and he come up and he handed me an application card and he said, "Boy, I want you to sign this up and come and play ball with us", and he says, "I will leave this and as soon as you get time, you make it out and then I will come back and get it." And when he come back, well, I never signed it, and I handed it back to him and I told him I didn't think it was a thing I wanted to sign.

Q. Can you tell us about when this happened?

A. That was either the 6th or the 8th of August.

Q. Did he ever come back to you again?

A. Well, I took, I delivered some pieces to him at his bench, and he told, me, he says, "I would like for you to sign this application", he says, "Come string along with us", he says, "Because I think it is the best thing for you."

Q. Was that all the conversation?

A. Yes, at that time.

[fols. 65-68] Q. Did you see him on other occasions soliciting other people?

A. Yes, I did, I seen him talk to different fellows about joining the A. F. of L.

Q. Did he go around——

By Trial Examiner R[illegible]kwell:

Q. This was Birod, you said?

A. Yes.

By Mr. Rose:

Q. Did Birod go around a good deal during working hours?

A. Yes, he did.

Q. He worked in your shop?

A. He worked in the front end of the tool room and I worked in the extreme end of it, the other end of it.

Q. Now, did Arthur Fouts solicit your membership?

A. He did, in the Welfare.

Q. Is it Walter Fourts or Arthur Fouts?

A. Walter. He did in the Welfare and after I wouldn't join the Welfare, he tried to get me to join the A. F. of L.

Q. Can you tell us when, what day of the month?

A. That was between, about the 8th of August.

Q. And did you have a conversation with him at that time?

A. Well, he told me that I was pretty good at my trade and he kind of liked for us—kind of liked for me to join the A. F. of L. and string along with the boys.

Q. Was this during working hours?

A. Yes, sir.

Q. Did he ever approach you at any other time?

A. Well, I think he did on another occasion, when I delivered some pieces to him. I believe it was on Wednesday of the week of the 8th, I took some pieces to him, and he set them on the bench, and he said, "Wait a minute, I want to see you", and he says, " I want you to come and join the A. F. of L. with us and string along."

* * * * * * *

[fol. 69] Trial Examiner R[illegible]kwell: I wonder, gentlemen, if some one of you would make a short statement as to the

physical set up at the plant. These witnesses constantly refer to somebody working in the John Lees Division and somebody in the Acme Division, and I don't quite get it in my own mind, and I don't believe anybody reading the record would understand what the distinction is, because there is only one tool room.

Q. Now, is there only one plant?

I take it, there is no controversy about this?

Mr. White: No. Your honor, here is the situation. We hear about the Acme Company, the Acme Machine Products Company. It was engaged principally in the manufacture of screws and bolts. It also did have a department making other automobile parts, but that was scrapped at the time of the merger, so that the Acme Machine Products Division that came into the Serrick Corporation was engaged in that particular line of business.

The John Lees Corporation was engaged in the business at Indianapolis of manufacturing various automobile parts other than bolts, and things of that kind, including moldings that go along the running board of the automobiles, along headlights and louvers that go on the front of automobiles. That was moved in, as I understand it, the production end was moved in to one side of the plant, the Lees side, to take care of that particular business, and the Acme side took care of the other business.

The tool room, however, was all in one room. It is a room about 75 by 100 feet, and it is right in the center of the plant, and while the employees engaged in that tool room largely did one type of work or another, they were together, while [fol. 70] the rest of the plant was separated by a wide aisle and it makes two separate units.

Trial Examiner Rockwell: I see. The Serrick Corporation has only one plant in Muncie?

Mr. White: That is right, one manufacturing plant.

Trial Examiner Rockwell: And only one building?

Mr. White: That is right.

Trial Examiner Rockwell: It is all in one building?

Mr. White: That is correct.

Trial Examiner Rockwell: But one side of the building is devoted to the work that the Acme Company did formerly?

Mr. White: That is right.

Trial Examiner Rockwell: And the other side is devoted

to the work that the John Lees Company did formerly at Indianapolis?

Mr. White: That is right.

Trial Examiner Rockwell: The tool room is in the center and the men are rather mixed up, one man doing the work that the Acme Company used to do and the other man on the other side doing the work the John Lees Company used to do.

Now, some of the men testified they started to work in February. The Acme Company was taken over by The Serrick Corporation when?

Mr. White: I think early in December.

Trial Examiner Rockwell: Early in December 1936?

Mr. White: But the John Lees Division did not move down to Muncie until the first of February.

Trial Examiner Rockwell: Yes. I think I am clear on that. Thank you. Now, do you agree to that statement?

Mr. Sawyer: I believe you would also want to tell about the Stenotype department.

Mr. White: Oh, yes, I believe I did forget to mention that the John Lees Division was also engaged in the manufacture of Stenotypes; in fact, is the sole manufacturer in the United States of Stenotype machines, and that business was moved down to Muncie and is now a part of the business of The Serrick Corporation in the John Lees Division. I overlooked that.

[fol. 71] Trial Examiner Rockwell: Do you agree to that statement?

Mr. Rose: I don't know as I agree to his statement with respect to the tool room. I would like to find out a little more about the tool room, as to whether the people were actually mixed up.

Mr. Sawyer: I believe, if you will pardon me for interrupting, that the purpose of what Mr. White gave was to show the general set-up, so that we can agree to it, and different physical matters can be brought out in the testimony.

Trial Examiner Rockwell: You would agree to the statement, in general?

Mr. Rose: Yes.

Trial Examiner Rockwell: And with the right to introduce other testimony as to the conditions in the tool room.

Mr. Rose: Yes.

Trial Examiner Rockwell: Does everybody else agree to that statement? Mr. McDonald?

Mr. McDonald: Yes.

* * * * * * *

ERSKINE E. ALLISON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

* * * * * * *

[fol. 72] Q. And did anyone solicit your membership in the Machinists organization?

A. Yes, sir, along about August 9th, I come in to work one evening, and there was a group of men gathered together up around the grinder.

Q. I didn't understand you.

A. There was a group of men gathered together up around the grinder.

Q. Yes.

A. And one of the men called me over.

Q. Can you tell us who?

A. I can't remember who, but I went over, and it was a man by the name of Wheeler who had the application blanks in the A. F. of L., explaining to these boys, and I asked him if he wasn't taking quite a chance with his job out there at the plant, and he said, "No, I am not." He says, "The company has told us if we get enough members they will give us a closed shop contract."

And I says, "Are they going to let the organizer in the plant?" and he said, "They are".

Q. Was anything further said about it at that time?

A. No, not at that particular time. Another man called me pertaining to a job he wanted me to take over when he quit, and I went over and talked to him a while. Then from [fol. 73] that time on up to the 13th, well, there was very little work went on on that side by this man Wheeler and Walter Jacobs. They kept talking A. F. of L. and C. I. O.

Q. They did what?

A. They talked both A. F. of L. and C. I. O. They would come over and tell us what the C. I. O. had done at some place and wanted to know if we approved of it, and tell us what the Machinists was doing and wanted to know if we

didn't want to sign up. They kept that up until the evening of the 9th.

Q. Did they come over to your work bench?

A. Yes, they did.

Q. And was Mr. McCoy, the foreman, around, or who was the night foreman?

A. The night foreman when I come on was Russell Dininger, and after twelve o'clock the foreman was Joseph Bolander.

Q. Were either of these men around when the solicitation went on?

A. Yes, they was.

Q. And would you say that it went on pretty constantly?

A. Quite constantly.

Q. Was something said to you about a straw vote?

A. Yes, Wheeler come to me, and it was along about the 9th of August, and he said they had taken a straw vote that day and the straw vote showed they had a majority, and I asked him why they hadn't been around to ask the third turn, and he said that wasn't necessary, they had a majority before they got that far.

Q. How many men were there in your turn?

A. Five, that is on the Acme side, and then there was five or six on the John Lees side.

Q. So there were about eleven on that whole trick, were there?

A. Yes.

Q. Did you talk to any of your co-workers, any of the other workers on the other shifts about a straw vote?

A. Yes, I did. I asked them about that, and all I asked about it didn't know anything about a straw vote.

* * * * * * *

[fol. 74] Q. Did you have any conversation with Wayne Shimer?

A. Yes.

Q. Tell us, first, who Wayne Shimer is.

A. Why, that happened, if I remember right, along about the 26th of July.

Q. Tell us who Wayne Shimer was, please.

A. He is night superintendent.

Q. All right. Now, tell us what he said.

A. Why, I had been up to the head of the tool department

[fol. 75] about a job, and as I come up the gangway, I met Carl Carmen, an inspector.

Q. He is one of the parties named in this complaint?

A. Yes.

Q. Go ahead.

A. So I asked him something about a job going on down there, and he answered me, and we stood there and talked a few minutes. Then I left him and started up the gangway, and Shimer was coming down the gangway, and he said, "Well, Dutch, did you get an earful of the C. I. O.?"

I said, "No." He said, "What do you think about it?" something like that. He said, "Well, I will tell you, Dutch, we knew at that time that Carl Carmen had been told he was going to be fired."

Q. That what?

A. "That Carl Carmen had been told he was going to be fired."

By Trial Examiner Rockwell:

Q. Carmen is the one you just mentioned?

A. Yes, and Shimer, well, he says, "As you know, some of the foremen around here don't like the C. I. O.", and he says, "There is going to be quite a layoff around here and these fellows that don't like the C. I. O. are going to lay these fellows off first."

By Trial Examiner Rockwell:

Q. Who was talking with you at this time?

A. Wayne Shimer. And we had quite a little conversation there in connection with that, and he mentioned that John Bailey, the foreman of the heat treat——

By Mr. Rose:

Q. The foreman of the heat treat?

A. Yes, he says, "That he treated the hot beds of the C. I. O. at this plant, that is where he first started." He says he wouldn't be surprised but what John Bailey laid a lot of his men off, and he says, "Anyway, when they get busy around here again, you are going to see a lot of new faces here."

Q. Did Wayne Shimer, in the course of that conversation, say anything about, "Wait a week and watch the C. I. O. faces go?"

A. No, he didn't say it that way exactly, but he said there would be a lot of new faces around there.

Q. Did Shimer say anything about Mr. Serrick at that time?

A. He said that Mr. Serrick would recognize an A. F. of L. but he would not recognize a C. I. O. union.

* * * * * * *

[fol. 76] CHARLES J. FENSEL, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

* * * * * * *

[fols. 77-87] Q. Now, subsequently was your membership solicited in the Machinists organization of the A. F. of L.?

A. It was approached to me, yes.

Q. By whom?

A. Well, Mr. Dininger, or whatever his name is.

Q. What is that? What do you say?

A. Mr. Dininger, the boss of the second trick.

Q. What did he say?

A. He asked me if I wanted to join the A. F. of L. I said, "No," and he said if I would join the A. F. of L., he would give me a good rating.

Q. He would give you a good rating?

A. Yes.

Q. And can you say when he said that?

A. Well, it was August 10th.

Q. Was this during working hours?

A. Yes, sir.

By Mr. White:

Q. I just want to know if you weren't told on the 10th of August that the company had signed a closed shop agreement with the A. F. of L. in the tool room?

A. No. I was asked to take out an A. F. of L. card, that if I did, I would get a good rating, but didn't mention nothing about a closed shop, or anything like that.

Mr. White: That is all.

Mr. Rose: That is all.

By Trial Examiner Rockwell:

Q. Who was it that talked to you on August 10th?
A. Mr. Dininger, whatever his name is.
Mr. Rose: Dininger, D-i-n-i-n-g-e-r.

By Trial Examiner Rockwell:

Q. Now, who is Mr. Dininger?
A. Well, he took the second trick, was the foreman after Dominic left at five o'clock. When we was taking orders we took orders from him after five o'clock.
Q. In other words, the second shift was split up there?
A. If we didn't have enough to do after the day boss left, Mr. Dininger would refer us to some other job.
Q. Was he the foreman?
A. Yes, sir.

* * * * * * *

[fol. 88] Levi C. Benn a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Q. Did you ever join the Acme Welfare Association?
A. No, sir.
Q. Did they take ten cents out of your pay each week?
A. Yes, sir.
Q. In the recent months before your discharge, were you ever solicited for membership in the Acme Welfare Association?
A. I was.
Q. By whom?
A. By Walter Fouts, Cecil Shock. That is all I can name at the present time, that I can think of.
[fol. 89] Q. Will you tell us when they solicited your membership?
A. I beg your pardon?
Q. Will you tell us when they solicited your membership?
A. Oh, I would say along in May, maybe June.
Q. Was it on company time?
A. Yes, sir.
Q. Will you tell us what conversation you had with Walter Fouts?

A. Well, he came to me and asked me if I would care to sign this card and I looked at it and I told him no, sir. He says, "Well, I think you are making a mistake." I said, "Well, I have made many of them in my time," and he kept on talking and talking to me and I said, "Now listen, Walter, I am sorry, I will still not sign that card. I refuse to sign that card for anybody."

Q. Was that all the conversation you had with him at that time?

A. That was all of importance, yes.

Q. Did he ever come to you again about it?

A. Several times.

Q. And did you have any further conversation at any other time, or was it just the same?

A. Just about the same as the present conversation.

Q. What position did Walter Fouts hold in the tool room?

A. Well, he was supposed to be my boss, that is all I can tell you.

Q. Was he an assistant foreman?

A. He had charge of the roll department of the tool division.

Q. Now, you stated that Cecil Shock solicited your membership.

A. Yes.

Q. Can you tell us when he talked to you?

A. Oh, along about the same time that Fouts did.

Q. What conversation did you have with him?

A. Just about the same thing.

Q. And did he come to you on more than one occasion?

A. Yes, I would say he did.

Q. Did Cecil Shock hold any position in the company?

A. He was in charge of the tool room when McCoy was gone.

Q. Did he hold a position of assistant foreman?

A. Well, I couldn't answer that question. I don't know.

Q. But he did have supervisory control when McCoy was gone.

A. When McCoy was gone, yes.

* * * * * * *

[fol. 90] Q. Now, was your membership ever solicited by any one for the machinist organization of the A. F. of L?

A. Yes.

Q. By whom?

A. By Shock, Walter Fouts, Mose Bir d and Arthur Baker.

Q. And can you tell us when they solicited your membership? A. Well, I would say along about the first of August.

Q. And did they individually solicit your membership on different occasions?

A. Yes.

Q. Can you tell us what conversation you had with each one?

A. Well, Shock came to me different times and asked me if I didn't think I was making a mistake in not joining. I told him I didn't think I was. He said if I didn't think it would be—Fouts asked me if I didn't think it ould be my job if I didn't join. I said it probably would, but I have lost jobs before.

Q. What is that?

A. Fouts asked me if I didn't think it would be my job if I didn't join, and I said it probably would, but I have lost jobs before. And about the same thing happened with these three fellows, just about the same conversations.

Q. Did Baker hold any supervisory position in the tool room?

A. No.

Q. Did Mose Birod?

A. No, sir.

Q. Did you see these men spending much time going around through the shop soliciting?

A. Well, yes, sir, Mose Birod and Shock I would say half of the time.

Q. You said Shock was a sort of assistant foreman?

A. Yes. Shock and Mose Birod, yes, about half of the time.

Q. You said Shock was in charge of the shop?

A. During McCoy's absence.

Q. And McCoy was the foreman.

A. Yes.

Q. Can you recall any conversations with these men that you haven't told us any different from what you have al-
[fol. 91] ready told us?

A. Well, on the 11th of August Shock came to me again about 9:30 and he says, "Benn, the A. F. of L. contract has been signed. Unless you join the A. F. of L., you have got ten days from ten minutes ago to either join or be fired,"

and when this first came up they gave us thirty days to join the A. F. of L., then they came back with ten days and they gave us two hours in the end. Mose Birod made a s-atement, he said, "I will make you fellows awful sorry if you don't join the A. F. of L.," he says, "You will be fired." I says, "I have been fired off from better jobs than this." He says, "You are making a sad mistake." I said, "O. K."

Q. And you were fired?

A. Yes, August 13th.

Q. When did you join the Auto Workers?

A. It was on or about the 17th of July, on or about.

Q. Did you wear a button in the meantime?

A. Not until August.

Q. Did you wear it before you were discharged?

A. Yes.

Q. When these men came around soliciting your membership in the machinist group, do you know whether Mr. McCoy was around?

A. He was to me twice.

Q. I don't understand.

A. He came to me twice the day I got fired.

Q. Yes, I understand, but was McCoy around when these men were soliciting?

A. Oh, yes, he was in the tool room all the time.

Q. Did you have any conversation with Mr. Lewis?

A. Not unless we were fired.

Q. What did you say?

A. Not until after we were fired.

Q. Will you tell us what conversation you had with him and when?

A. Well, that time when they had the deal fixed up and we was down to the paymaster's office to get paid, Johnnie came to me and said, "Benn, I am sorry this happened." He said, "When this thing was first started it was only for a bluff and the fellows called the bluff and we had to go on and do it."

Mr. Rose: You talk so fast I can hardly understand. What was that last?

Mr. White: I can't hear you over here now.

The Witness: Then move over where you can hear me, then.

Trial Examiner Rockwell: Speak a little more slowly, will you please.

[fol. 92] The Witness: He said he was sorry this went on through until we got fired. He said when it was first done it was done only for a bluff.

Trial Examiner Rockwell: Lewis said that?

The Witness: Yes.

Trial Examiner Rockwell: He said it was only for a bluff?

The Witness: Yes, but after it went so far the company had to go on and fire us to keep us from calling their bluff.

By Mr. Rose:

Q. Did he explain what he meant by this?

A. No, that was all the conversation.

Q. Tell us under what conditions you would be willing to go back to work.

A. I wouldn't go back to work under the present set-up.

Q. What do you mean by the present set-up?

A. Well, all this rawhiding and railroading and antagonism and that kind of thing.

Q. I don't understand you.

A. I say this rawhiding and antagonizing they have out there.

Q. If you were offered a job with them would you go back to work?

A. No.

Q. What is the trouble out there that you object to?

A. Well, there is too much agitation, too much antagonizing out there, that is all.

Q. By whom?

A. By employees of the tool room.

Q. What kind of agitation are you referring to?

A. Well, whenever people give you a cussing because you don't join the union they want you to join, because you don't see things the way they want you to see, that is what I mean.

Q. What men are you referring to?

A. Mose is one of them, Mose Birod and Shock and Walter Fouts.

Q. You understand that Moses Birod has left for parts unknown?

A. I heard that.

Q. Would that make a difference?

A. No, not yet. Not enough yet.

Mr. White: I object to the statement of counsel.

Mr. Rose: I said "I understand."

Trial Examiner Rockwell: He asked the question, in that case. He didn't state the fact.

By Mr. Rose:

Q. Tell us what you object to in particular.

A. Well, people give you a cussing, call you a dumb-bell and all them things. I don't think that is gentlemanlike myself.

[fol. 93] Q. Was there a time when conditions were satisfactory there?

A. Absolutely.

Q. When did they cease to be?

A. Along in July after we refused to join the shop union.

Trial Examiner Rockwell: The shop union, what is the shop union?

The Witness: Well, that was later developed into the I. F. M. That is the Acme Welfare Association.

Mr. Rose: I didn't get that question.

Trial Examiner Rockwell: The witness referred to the shop union.

By Mr. Rose:

Q. What is the shop union?

Trial Examiner Rockwell: I asked him what the shop union was.

The Witness: It later developed into the I. F. M.

Trial Examiner Rockwell: You mean by that the International Association of Machinists?

The Witness: Yes, right.

By Mr. Rose:

Q. Would you be willing to go back if you had a chance to join some other union?

A. Time would tell. I can't. Time and conditions would tell.

Q. Do you object to joining the A. F. of L. organization?

A. I belong to it now.

Q. You belong to it now?

A. Yes.

Q. But you objected to it out there?

A. Yes.

Q. Well, I think we should know definitely under what

conditions with a certain amount of detail, you would be willing to go back. You know the Board is——

A. Well, here is the whole thing. I wouldn't want to go back under the same conditions in which I left under. Whenever people give you a cussing and call you a dumb-bell or something like that, I don't consider that anything for a man to have to hear at all. It gets under my skin, you know.

Q. Why did they call you those things?

A. Because I refused to join their shop union.

JACOB LEAR called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rose:

Q. Mr. Lear, state you full name, please.

A. Jacob Lear.

[fol. 94-96] Q. Mr. Lear, where do you live?

A. 1444 West 6th Street.

Q. And when were you first employed by the Acme Products?

A. About nine years ago.

Q. Did you work for them continuously until the time The Serrick Corporation took over the Acme?

A. I did.

Q. Did you work for The Serrick Corporation up to August 13th?

A. I did.

Q. What type of work did you do?

A. Worked in the tool room.

Q. Are you a tool worker?

A. Yes.

By Mr. Rose:

Q. Mr. Lear, was money taken out of your pay check each week for the Welfare Association?

A. It was.

Q. Was your membership ever solicited for the machinists group of the A. F. of L.?

A. Right at the last minute when they canned me.

Q. Had it ever been solicited before?

A. No.

Q. Did you ever see Mose Birod or Walter Fouts or Arther Baker or any one else soliciting members for the A. F. of L.?

A. Oh, I seen them around talking. I don't know what they were talking about.

Q. Did you ever see them with any of those cards?

A. Never did see a card.

Q. Did you see them going around on company time?

A. I seen them going around, yes.

Trial Examiner Rockwell: Off the record.

(Discussion off the record.)

By Mr. Rose:

Q. Mr. Lear, do you know when these solicitations took place?

A. No, I don't know.

Q. I mean, can you tell us about the time.

A. I don't even know they was soliciting, but I know I seen them around talking, but I don't know what they were talking about.

Q. Was it part of their job to go around talking?

A. Might have been. I don't know. Might have been talking about work. I don't never go around and I didn't even bother them.

Q. Do you know what their duties were?

A. Making dies.

* * * * * * *

[fol. 97] FLOYD STEVENSON a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Q. Was your membership ever solicited for the Acme Welfare Association?

A. Yes, sir.

Q. Can you tell us when?

A. No, I don't remember the date.

Q. Can you tell us what month it was?

A. I imagine it was about two months before I got canned, something like that.

Q. Can you tell us who solicited it?

A. Why, Walter Fouts.

Q. Did he solicit it during working hours?

A. Yes, sir.

Q. And can you tell us any conversation you had with him at that time?

A. Well, he said that he would like to get all of us into that in order to beat the C. I. O. with things as they was in the tool room.

Q. Did you ever attend any Acme Welfare meetings?

A. No, sir.

Q. Did you have any further conversation with Mr. Fouts?

A. Well, after the——

[fol. 98] Q. I mean about the Acme Welfare Association.

A. No, sir.

Q. Did any one else solicit your membership in the Acme Welfare Association?

A. John Lewis, the employment man, he told me he would like for me to get in.

Q. When was that?

A. That was about the same time, right in the neighborhood of the same time Walter did.

Q. Where did you see him?

A. It was between his office and the tool room.

Q. Was it during working hours?

A. Yes, sir.

Q. Now, when did you join the Auto Workers?

A. I joined about two or three weeks before I got canned.

Q. Was your membership ever solicited in the machinists group of the A. F. of L.?

A. Several times.

Q. Can you tell us by whom?

A. By Walter Fouts and Mose Birod and a fellow on the night trick, I believe his name was Wheeler.

Q. Can you tell us when?

A. Well, Mose Birod came around about three times on one Sunday and two or three times during the next week, but I don't know the date. It was about three weeks, I imagine, before I got canned.

Q. About three weeks before you got canned.

A. About two or three.

Q. When did you get canned?

A. About the 13th day of August, I believe.

Q. And you stated that you were solicited when you were working, on duty.

A. Yes, sir.

Q. Can you tell us what conversation you had with Walter Fouts?

A. He told me he would like for me to get into the company union just in order to beat the C. I. O., and then after I told him I didn't—I couldn't see it, I didn't believe in it, later on then, when he seen that was not going to do, he tried to get me to join the A. F. of L. for the same reason, just to beat the C. I. O.

Q. Is that the reason he stated?

A. Yes, he said anything to beat it, and he said if I would go in and didn't want to stay, that would be all right, just as long as they got in enough to beat them out, we could all help out.

Q. At this time that you were solicited for membership in the A. F. of L., was that about three weeks before you were canned?

A. Yes, sir, about. It was during a period of better than [fol. 99] a week. They came around several times during that time.

Q. What conversation did you have with Arthur Baker?

A. Arthur Baker, he tried to get me to go in, too.

Q. When?

A. Well, that was along about the same time, two or three weeks before, and he tried to get me to go in several times, and he told me if I didn't want to go in that and wanted to join the C. I. O. it would be all right, my job would be there just the same.

Q. Was this on company time that you had these conversations?

A. It was.

Q. Do you know whether Mr. McCoy was around at the time?

A. Why, Sunday, I know he was about six or eight feet from me when I was talking to Mose Birod on Sunday. My bench was only about six feet from his, McCoy's bench.

Q. And then you said you had some conversation with a man Wheeler?

A. I believe that is it. I am not certain about that. He is the night man, but he passed out blanks and he took and put them on the boss' bench. He came early one morning.

Q. Were they A. F. of L. blanks?

A. Yes, sir, and he put them on the boss' bench, desk, and had several men come up and fill them cards out there and I asked him if that was within the law. I told him he could be arrested for it. I said, "You can stop now." He says, "Who is going to stop me?" I says, "I can't, but I imagine I can bring somebody in that will." Then he took the cards off and some girls we have, they talked about me, ribbed me for a while about it, see.

Q. How long before your discharge did this occur?

A. How long before that?

Q. How long before your discharge?

A. Between two and three weeks. I couldn't say.

Q. Who was the boss that you mentioned?

A. Joe Bolander.

Q. You stated that he laid these cards on his desk. Was Bolander there?

A. He was there. He was standing there when I said so.

Q. What is his job?

A. He is the third shift foreman.

Q. Did you see the men soliciting other people?

A. Yes. They did it pretty openly for a while because they didn't pay any attention to anything.

[fols. 100-102] Q. Did you see them sign any one in the boss' presence at night?

A. Well, I did but I don't remember who it was.

Q. Did you have any conversation with Mr. McCoy?

A. Yes, sir.

Q. Will you tell us what that conversation was and when it was?

A. Well, it was right before the time I got laid off. He was going around there rather nervous or something and I happened to run out of a job and I said something to him about it looked like he was tireder than I was or something and he says, "They got me in a mess around here. I don't know whether I am coming or going, got these two unions here fighting each other. I don't know what to do. I can't stop it and I can't say anything to them." And he says, "The A. F. of L. members come and tell me what they are going to do but the C. I. O. doesn't say anything. I can't tell where to turn."

Q. Did you have any conversation with these men soliciting for the A. F. of L. about the C. I. O.?

A. Did I have any?

Q. Yes.

A. Well, I can't say just what it was. I don't know. I talked some to them about it.

Q. Was anything said about your beating the C. I. O.?

A. Well, Walter Fouts, they seemed to have a meeting there between Rudy Keil and Shock and Walter Fouts and McCoy one day in the office, and when they came back Walter Fouts told me that the C. I. O. was not as strong as they thought they was and the A. F. of L. would beat them easily. That is all I can say.

Q. Was anything said about dropping the A. F. of L.?

A. They said if I would get in the—wanted me to join and if I would get in, I could drop it just as soon as the trouble was over with, as they was going to do it too.

* * * * * * * *

[fol. 103] JAMES CONDON a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

* * * * * * *

[fol. 104] Q. I beg your pardon. What department did you work in?

A. In and out of the tool room. I was on machine repairs.

Q. You were on what?

A. Machine repairs.

Q. Did you ever see anybody going around soliciting memberships for the Welfare Association?

A. I did.

Q. Who?

A. Mr. Shock, I think, was his name.

Q. Cecil Shock?

A. I think that was his name, yes.

Q. Was he an assistant foreman?

A. Well, I don't know whether he was. He kind of had charge of the roll department there.

Q. Did he say anything to you?

A. No, he didn't.

Q. Well, on how many occasions did you see him?

A. Oh, it looked like it was every day or two there for a week.

Q. How many weeks was that before the time you were laid off?

A. Oh, it must have been four weeks.

Q. Before you were laid off?

A. Yes.

Q. And was this solicitation in working hours?

A. Sure.

Q. Did he have any cards or papers with him?

A. Well, not that I know of.

Q. Do you know whom he was soliciting? Do you recall whom he solicited?

A. Well, I only could recall one that I saw there, I was standing up near one man when he solicited him, wanted to know if he would join.

Q. Who was that?

A. He is a man by the name of Levi Benn. I was standing by him when he asked him to join. He didn't ask me at the time.

Q. Can you recall the date that that happened?

A. Well, I couldn't. It was—oh, it must have been three weeks before we was fired, two or three weeks.

[fols. 105-118] Q. And when were you fired?

A. The 13th of August.

Q. Was there any one else you remember who solicited for the A. F. of L.?

A. A man by the name of Birod.

Q. Birod, how many times did you see him going around?

A. Well, he was going around for a week every day.

Q. Did you see him with any cards?

A. No, he didn't have a card, but he had a piece of paper taking down names.

Q. And you say this happened for about a week or two; how long did it happen before you were discharged?

A. Well, he came to me on the 12th, the day before we was discharged and says, "We are going to have a full shop, you will have to sign up with the A. F. of L. if you want to work here." I told him I didn't believe I wanted to sign, so he went on, and he had taken several names. That is all he said to me.

Q. How long before that time had you seen him going around talking to people?

A. Oh, he was going around for two weeks, I suppose.

Q. When Cecil Shock and Moses Birod were soliciting membership, was Mr. McCoy around?

A. Mr. McCoy never came around until the 13th.
Q. I know, but I mean, was he in the tool room?
A. He was in the tool room.
Q. I mean, did all this happen where he could have seen it?
A. I think so. He was at his desk or around among the men all the time.
Q. Did you have any conversation with the other men in the department about this solicitation?
A. Several times they would come to me and say, "Did they ask you to join this and that," but I never paid any attention to any of them.
Q. I believe you said all the solicitation took place on company time.
A. Yes, sir.

• • • • • • •

[fol. 119] HERMAN MARTIN DAVIS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Q. Did you ever join the Acme Welfare Association?
A. Yes, sir.
Q. How long ago?
A. When I first started.
Q. Was there any solicitation made for that Association which you saw?
A. Which association do you mean?
Q. For the Acme Welfare Association?
A. Yes, sir.
Q. Can you tell us what you saw?
A. Sir?
Q. Can you tell us what you saw?
A. Well, they came around with cards on two different occasions.
Q. Who?
A. Mr. Sharpe.
Q. And who else?
A. I don't remember.
Q. Can you tell when this other solicitation was?
A. Sir?
Q. Can you tell us when that person came around?
A. That was about the first part of July.

Q. Did they ever solicit you for membership in the Machinists group of the A. F. of L.?

A. Well, on August 13th, Friday morning.

Q. Will you tell us about that?

A. Well, they came around on Monday before the Friday and warned me that if I didn't join the A. F. of L. I wouldn't get to join anything, that I would be discharged, and from Monday on up till Friday they were around anywhere from one to two or three times a day making some kind of remark in that conversation and warning me that I would either join or get out, and Friday morning, Mr. Birod came around and told me that he was taking up applications for the A. F. of L. and wanted to know if I wanted to join.

I told him no, and he told me the boss would be around to see me later.

Q. Who is this that said this?

A. Mr. Birod.

Q. Did you see the boss come around too?

A. No, the boss didn't come around until evening.

Q. I mean, earlier in the week?

A. No. Mr. Birod was the one that done all the A. F. of L. talking.

Q. He is the one that talked to you about the A. F. of L.?

A. Yes, sir.

[fols. 120-124] Q. At any time?

A. Yes, sir.

Q. Did you see anyone else?

A. A fellow that they call Shock.

Q. Cecil Shock?

A. I couldn't give his first name.

Q. What is his position there?

A. He is a tool and die maker on the John Lees side.

Q. Did he ever act in Mr. McCoy's place?

A. Yes, sir.

Q. Tell us about his going around.

A. Well, no matter, then—on the week preceding the 13th, Mr. Shock and Mr. Birod, that is practically all they done, was go from one bench to another soliciting. Mr. Shock himself personally never came to me to solicit.

Q. Did you see how long they spent doing this?

A. At least a week preceding the day we were fired, the 13th.

• • —• • • • •

[fols. 125-137] JOHN H. ALLRED, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Q. Was your membership ever solicited in the Machinists group of the American Federation of Labor?

A. No, sir.

Q. Did you ever see anyone soliciting for that?

A. Well, I have seen them talking to fellows and the boys told me later that is what they were talking about. It is only hearsay. I didn't understand the conversation.

Q. Can you tell us who these people were that were going around?

A. One of the set up men in our department.

Q. What is his name?

A. Fouts, Ted Fouts, I believe.

Q. And what time of the day did you see him going around talking?

A. Just all times during the day.

Q. Can you tell us about what time of the month it was?

A. Well, I don't know that I could say what particular time of the month. It just happened almost every day right along for a week, the week before the strike, and some since. Of course, not so much since.

* * * * * * *

[fols. 138-139] S. D. MURPHY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination:

* * * * * * *

[fol. 140] Q. Will you tell us what they do in the heading department?

A. They take the steel rod or coils of steel rod and run them through the cold heading machines, which cold-heads or cold-forms a head on the bolt.

Q. Now, before it goes through that process, isn't the rod cut?

A. That is all part of the operation.

Q. I want to get a picture of that operation.

A. Well, that is an automatic operation, just feed the

rod off of the coil into the machine and it comes out of that cut to the proper length with a head on it.

Q. Now, the head is not soldered on, is it?

A. No, no, it is cold-formed out of the rod itself.

Q. That is the heading department.

A. That is the heading department.

[fol. 141] Q. From there what is the next process? Where does the steel go from there?

A. It would go, if it is to be finished up there as a cap screw, it would then go in the trimming department.

Q. What do they do to it in the trimming department?

A. The head is just trimmed to a hexagon shape.

Q. How many men work in that department?

A. Thirteen to fifteen.

Q. And there is a foreman over that department?

A. Yes. Now, I am not quite clear as to all of the supervisory men in the bolt department. There are men in charge of those various departments, but it isn't as broken down, quite as much as the John Lees Division.

Q. I see. Back now to the heading department, before we get away from that, what kind of machines or what are the names of the machines that are used to do that work, you talked about?

A. You mean the manufacturer's name or the type of machine?

Q. Any way.

A. It is a heading machine, cold heading machine.

Q. How many of those machines are there in there, if you can tell us?

A. I would say probably fourteen or fifteen.

Q. Now, besides those machines are there any other type of machines in there?

A. In the heading department?

Q. Yes.

A. No.

Q. Then that machine cuts the bolt to length and puts the head on it and finishes it, one machine for each of those fourteen men finishes what is done to it in the heading department.

A. That is correct.

Q. Now, as to the trimming department, how many machines are there in there?

A. Oh, approximately the same number. I can't really answer as to the number.

Q. Are those machines all alike?

A. Except as to size they generally are.

Q. They all perform the same duty. What do those machines do?

A. They trim the head to a hex. They trim the head of the bolt hexagon shape.

Q. I assume the bolt is fed into the machine automatically some way.

A. Put into a hopper and feeds down itself.

[fol. 142] Q. Those thirteen people you say work in there, do they all operate trimming machines?

A. So far as I know, they do.

Q. Now, then, after the bolt leaves the trimming machine, where does it go?

A. Normally I would think it would go to the roll threading department.

Q. How many people work in the roll threading department?

A. Twelve or thirteen, along in there.

Q. In that department, are there machines that do the work there?

A. That is right.

Q. About how many machines in there, would you say?

A. I don't know.

Q. Well, is it two or three or twenty?

A. Oh, there must be, I would say eight or ten.

Q. Take about one man to a machine, is that the way it is operated?

A. I am not certain about that.

Q. Now, is the bolt automatically fed into there?

A. Some of them are and in some cases they are fed by hand.

Q. Now, what physicall- does that threading machine do to the bolt?

A. It rolls the thread on the shank of the bolt.

Q. From there where does the bolt go?

A. Well, it might go to the pointing department or it might go to the drilling department. Possibly it would go from there directly to the heat treating department. It would all depend on what kind of bolt it was and what the subsequent secondary—or subsequent operations were required.

Q. Take those that go to the pointing department. How many men are employed in the pointing department?

A. Five or six.

Q. Five or six. Do they have machines in there?

A. They have machines for pointing.

Q. And what do you mean by pointing?

A. Well, that is putting a tapered point on the threaded end of the bolt.

Q. Now, is there a foreman over that department?

A. I can't answer. I do not know.

Q. Now, those bolts that would go into the drilling department, how many men work in that department?

A. There are women working in that department.

Q. All right, how many women?

A. I would say in the neighborhood of twenty.

Q. Do they have drills in there, machines to drill?

A. Yes, sir.

[fol. 143] Q. When you say a bolt goes into the drilling department, what do you drill about a bolt?

A. Well, you might drill a cotter key hole through the shank of the bolt or a cotter key hole through the head of the bolt and on some special bolts there is a special drilling for oil holes and so on and so forth.

Q. Then in that drilling department, after a bolt is drilled, what is the next process? The hole is drilled in it, and what is the next process it goes through?

A. Well, that would depend on what was required by the specifications. It might be heat treated and might be sold unheat treated.

Q. Then it would be heat-treated. After the bolt goes in there, after it is drilled, then would it be inspected and then drilled again or would it be drilled and heat treated and then inspected and then have to be fixed up?

A. I don't know where the inspection cycle enters into the product.

Q. Who would be the proper person to tell us about that? The inspector in there, would that be a proper person?

A. I would think that Mr. Perry who is the superintendent of the bolt division would know about it or Mr. Stillwagon.

Q. Mr. Stillwagon would know about that?

A. It might vary between operations. They might inspect after one operation for one type of bolt and another operation for another type.

Q. You told me there were about twenty worked there in the drilling department. Now, you have taken the bolt to the pointing department and to the drilling department.

After either one of them get through with them, do they go to the heat treating department?

A. They are washed as a rule before they are heat treated.

Q. All right, what is the department called where they are washed?

A. Well, the washers are in conjunction with the heat-treating department.

Q. How many people work in this heat-treating department?

A. Fifteen or twenty.

Q. And you say they are washed. How do they do that, do they do that by hand or by agitation or what?

A. No, they are mechanically washed.

Q. Does it take an operator for that machine?

A. Some of them are washed I think after they go in the [fol. 144] heat-treating furnace or before they go in the treating furnace. Some of them are washed ahead of time, sometimes, and some, I think, after.

Q. When the bolt goes in there to the heat-treating department, what physically is done to it?

A. It is laid on a belt and goes through the furnace.

Q. How many furnaces have they out there?

A. There are two heat treating furnaces and three annealing furnaces, I believe, one of them not used very much.

Q. When you are talking of annealing furnaces, as I understand it,——

A. Drawing furnace would be a better word.

Q. When a bolt is placed on the belt and is heat treated, that makes it tough, doesn't it?

A. Hard.

Q. Then what is the purpose of annealing it?

A. To keep it from being too brittle.

Q. That is like they put something in water and draw it back out, isn't that the process of annealing it, or in oil?

A. Well, it would be heated in the furnace and quenched in oil and then go through the drawing furnace to draw it back to the proper temperature, proper hardness.

Q. Now, in those furnaces, how many men does it take to take care of one of those furnaces?

A. I am unable to answer that.

Q. You can't answer that question. All right. Now, after it has gone through the heat treating process, if it

was necessary to put it through this drawing process afterwards—by the way, how many men work in the department where the drawing furnaces are?

A. Well, that is all in the heat treating department.

Q. You took that into consideration when you gave the figures for the heat-treating department?

A. Yes. Now, by the way, I see a notation here that there are some separate men they have listed as washers.

Q. Separate men as washers.

A. Yes.

Q. Can you enlighten us a little more?

A. Six or seven people listed as washers.

Q. Six or seven people listed as washers. Now, then, after it leaves that department that you have discussed, the heat-treatment department, is the bolt finished then?

A. Yes, normally that would finish the bolt. Now, there is some inspection put on those bolts, sometimes after they are heat-treated and sometimes before.

[fol. 145] Q. There are inspectors?

A. There are various inspectors throughout that department.

Q. Throughout that department. Are you able to say how many?

A. We have listed here approximately eighteen or nineteen inspectors in the Acme Division, which is the bolt division.

Q. All this that we were talking about, is that in what you have referred to as the Acme Division?

A. That is correct.

Q. Now, after the bolt is what you have termed as probably being finished, where does it go to then?

A. It goes into kegs and then back to the shipping room.

* * * * * * *

[fol. 146] Q. Now, taking the other side of the house, the John Lees side, when the raw material comes in there, where does it come to?

A. If it is to be fabricated into a molding it will go to the rolling department. If it is a stamping, it would go to the punch press department.

Q. Well, it goes into the receiving room, doesn't it?

A. Oh, yes.

Q. And how many people work in the receiving room?

A. Well, we have but one receiving room, a common receiving room.

Q. Then the receiving room you referred to a while ago is a common receiving room.

A. That is right.

Q. For both sides.

A. That is right.

Q. The foreman of the receiving room for what you call the Acme-Lees side is the same as the foreman of the receiving room on the other side.

A. That is right.

Q. Now, you said, it would either go to the rolling department, or where else?

A. Or possibly the punch press department.

Q. Now, taking those parts that would go to the rolling department, what is the rolling department?

A. The rolling department consists of what are commonly known as roll forming machines, a series of rollers into which a strip of metal is fed and by means of those rollers it is formed to the proper contour or cross-sectional shape.

Q. Now, when you talk about it being rolled to contour, into this shape you are discussing, you mean it is made into —in common phraseology, is it made into a rod or what?

A. It is made into a formed strip.

[fol. 147] Q. A strip?

A. A formed strip.

Q. Can you give us the dimensions of it?

A. Well, it would vary, of course, depending on the molding, might be a quarter of an inch wide and might be two and a half inches wide, might be an eighth of an inch high or might be one-half an inch high, various contours, different contours or cross-sectional shapes.

Q. That raw material that goes into the rolling department, what ultimately becomes of it? What is it used for? Why do they—why does it go into the rolling department instead of the punch pressing department?

A. Because it is to be made into what are commonly known as moldings.

Q. We now have it down to that place, to this roll department. How many people are employed in this roll department?

A. Well, on the average I will say between possibly fifty and seventy.

Q. And there is a foreman over that department, is there?

A. There is.

Q. And how many of these machines do you have that do this rolling you are talking about?

A. There are about twenty-four I think.

Q. About twenty-four?

A. Yes.

Q. More than one man operate a machine?

A. Yes, as a rule there are—well, that will depend. Some of those machines are equipped with what we call automatic cut-offs, that is a device to cut the molding to a specific length close to the machine. In that case, there will be two men right by the machine.

Q. Now, to get this picture a little plainer, let's take some specific type of article that will go through that rolling department, and you can pick out whatever you want and tell us what becomes of this after it goes through the rolling department, name what article it is that you are going to manufacture now.

A. Let's take a piece of running board molding.

Q. All right, take a piece of running board molding. How do we get it through the rolling department?

A. It is rolled to the proper cross sectional shape in the rolling department and cut to the proper length.

Q. That is all in the rolling department.

A. All in the rolling department.

[fol. 148] Q. So that this machine cuts and rolls it at the same time?

A. Not necessarily.

Q. Well, what is the difference?

A. Well, it is a separate machine that cuts it off, and some moldings are rolled down a long trough and are cut off in a punch press at the end of that trough manually, that is, they are fed through the cut-off die manually, whereas the automatic cut-off machine the molding comes directly out of the rolling machine, runs through the die to the cut-off machine and strikes a trip which trips the cut-off machine and cuts it off. It is automatic.

Q. Then that die or the cut-off machines are in this rolling department.

A. That is correct.

Q. And the punch presses are in this rolling department?

A. We have a few punch presses in the rolling department.

Q. I see. After it leaves that department, what becomes of it?

A. Well, it would be washed, and that is also in the rolling department.

Q. Do you have separate people hired for washing in there or do you include them in the fifty?

A. That is included in that.

Q. It is washed, and what is the next process? Where does it go?

A. If the ends are to be formed, if it is to be pointed or the ends to be closed, it would go into the punch press department, and the ends will be closed on dies and punch presses and it will then go into the polishing department.

Q. Now, the punch press department that you refer to, how many punch presses are there in that punch press department?

A. Right in the neighborhood of one hundred.

Q. What does the punch press do? I mean, can you tell how the work is set up and so forth? Can you do that?

A. Well, the punch press is simply a machine——

Q. Well, a die is put in it.

A. A die is put in it.

Q. Then the material is put in it?

A. Then the material is put in it and the machine is tripped and a ram comes down on the punch on the die, hits the work and forces it down into the die so that it takes the proper contour.

Q. After it leaves the punch press department, where there are about a hundred people working, you say——

A. No, about one hundred punch presses.

Q. How many people work in there?

A. Well, they will run around 175, when we are running full.

[fol. 149] Q. The season varies in there, doesn't it?

A. Yes.

Q. That is quite a lot of times a new model car, you quit making parts for the old model car before the making of parts for the new model car starts.

A. That is right.

Q. Isn't that correct?

A. Yes.

Q. After that, where does your article go from there?

A. Well, a piece of running board molding which I considered as an example, it would then go into the buffing department, polishing department where it would be polished. It would then go over to the wrapping department.

• • • • • • •

Q. The various parts of a hood louvre would go through the punch press and so on down the line and then had to [fol. 150] be assembled, is that right?

A. That is right.

Q. About approximately how many different pieces have to be assembled that are made separately, cut by these dies and punched and so forth, how many parts are there that have to be assembled into what is ultimately called a hood louvre?

A. Well, on the 1937 louvre there were about twenty-one parts or separate pieces on the 1937 louvre.

Q. Now, all these separate pieces or a majority of them went through this process that you have taken this molding through?

A. No, I wouldn't say the majority of them.

Q. All right, how many of them?

A. Well, on the 1937 louvre there were only, I would say about probably ten.

Q. Probably ten. Where did the other parts come from?

A. The other parts originated in the punch press department as stampings, what are commonly known as stampings.

Q. All right. Now, let's take something that originates in the punch press department, as you just mentioned. Take an example that would originate in the punch press department.

A. A component part of a finished article or a pure and simple stamping, which is a stamping only and finished as such, which do you prefer?

Q. What is a pure and simple stamping?

A. Well, anything that is blanked, formed and then polished and then finished, we will say, would be.

Q. If there was something the size of a square I hold in my hand that was just perfectly flat and went in a hood louvre, it would originate in the punch press department, is that right?

A. Yes, the chances are it would.

Q. Something that is plain, that is just cut out, it would originate there, be buffed and come right around——

A. Wouldn't necessarily be buffed unless it was supposed to be brightly finished.

Q. Those parts that have to be assembled, after they leave the buffing and polishing department they don't go to the wrapping and packing department, do they?

A. The parts that had to be assembled?

Q. Yes.

A. No, they would go to the assembling department.

Q. Now, the assembling department, is that what has been called the Buick line?

A. That is what we know or designate as the paint and [fol. 151] assembling department and is the department which took the parts that went into the Buick louvre and assembled the thing into a whole.

Q. That is called what department?

A. The paint and assembly, we call it.

Q. Paint and assembly.

A. That is right.

Q. Was there one foreman over all that?

A. Yes.

Q. Asking you the same question over, is that what you have been referring to as a line here?

A. Yes, the assembly line. When they referred to these people in the Buick assembly line, they referred to the hood louvre line.

Q. When the parts of the hood louvre come into this department, what is the first thing that is done? Pardon me. First, what is the first thing that is done? First, how many people work in this assembly and paint department?

A. Well, I would say around sixty to sixty-five.

Q. When the various parts come into this paint and assembly department, what is the first thing that is done to them?

A. Well, they are put into a jig or a fixture and assembled together.

Q. What is a jig?

A. That is a device for holding parts rigidly in relation to one another until they can be permanently fastened together.

Q. How many people does it take? That is the head of the line, isn't it?

A. I would say so, yes.

Q. Does more than one person work at the head of the line?

A. I couldn't answer that. I am not sure.

Q. You don't know about that. Then that goes around, after they put it in the jig, that is a wooden arrangement, and after they put it in that wooden box, it has gone through this process of assembly, where does it go then?

A. That louvre went through several punch press operations, clinching operations, riveting operations, to fasten the various parts together.

Q. There was punch presses also in this paint and assembly department?

A. That is correct.

Q. And you have set-up men to set up the punch presses in both places, don't you?

A. I think that there are separate—I don't know whether there is a separate set-up man in the paint department or not.

Q. Well, if there is, is he included in this number that you gave us, that is the approximate number of workers [fol. 152] that you have given me, or are they hired under different rating in there?

A. No, they would be included in these figures.

Q. Now, these punch presses in here, the operators of them punched—well, tell me what the operators of that punch press does.

A. Well, she simply puts the pieces in it and puts the parts in, and it comes out finished.

Q. For instance, when these things are laid in one of these jigs the punch press might be for the purpose of fastening them together, might it?

A. That is right. We have dies in there that are riveting dies. Well, let's put it this way: There are no blanking or forming operations done in the punch presses of the Buick louvres in the assembly line. Now, we might use those presses at other times.

Q. For other purposes?

A. For other work, if that line were down.

Q. You could use them for whatever you have got dies for.

A. That is right.

Q. When the part comes into this assembly line here—I keep wanting to call it the line.

A. That is all right.

Q. When the part comes into this assembly line there, it has already been all polished or whatever is going to be done to it in that way, hasn't it?

A. Yes.

Q. And when it leaves this assembly line it is ready to go out.

A. Providing it has not been marred or damaged in going through it and has to be repolished, it would be ready to go.

* * * * * * *

[fol. 153] Q. Now, there has been some testimony in here about a Frigidaire line. Now, I want to talk about the Frigidaire part or whatever you make out there—it would be more proper to ask you what you do make out there in regard to the Frigidaire line. The Frigidaire line is simply a group of operators in the punch press department.

Q. You make parts for the Frigidaire there?

A. A trim molding that goes on the outside of the Frigidaire refrigerator cap.

Q. Then the Frigidaire line does have an assembly before they go out? Are there several pieces to that?

A. Yes.

Q. Then the Frigidaire line, there are parts that go through what amounts to a similar process as you have told us about the Buick louver?

A. Well, if you mean the assembly process——

Q. No, I didn't mean that. I guess my question was misleading.

A. If you mean the assembly process, yes, they are assembled.

[fol. 154] Q. Let's start at the first of it. Would the raw material that is brought in there to make a part that is going to be in this Frigidaire, would that go through the rolling department?

A. Yes.

Q. Then from there would that go into the punch press department?

A. Yes.

Q. Then from there would that go into the buffing and polishing department?

A. A portion of them, that portion——

Q. The portion that was necessary?

A. Yes, the things that were to be polished.

Q. And when you refer to the rolling department and the punch press department and the buffing department, those are the same departments we were talking about a while ago?

A. That is right.

Q. There is only one department for each of those?

A. Yes.

Q. Then from there it would go into this assembly line?

Q. Yes, but the difference there is that the assembly line is in the punch press department.

Q. It is a different assembly line?

A. Yes.

Q. It is not the same assembly line, the same people do not work that work on the Buick louvers?

A. Not necessarily.

Q. Is there anything I have skipped over in this picture of what goes on in the John Lees department that should be added to give for the record a true picture of the operation that goes on on the raw material until it gets out as a finished product?

A. Fundamentally, I would say no. There may be some subsequent operations on a piece of molding, after it is rolled and the ends are formed, and it might be bent to contour, go into what we call the hand forming department.

• • • • • • •

[fol. 155] Q. Now, referring to the Stenotype department, how big a department is that? Is that a physical department out there in the plant?

A. Yes.

Q. How many people work in that department?

A. About thirty or thirty-five.

Q. About thirty or thirty-five. Do all the operations that go to make up this Stenotype take place there in that one department?

A. Except the punch press operations, yes, making stampings.

[fol. 156] Q. Well, the first operation then of the part that you make comes through this punch press department that you have already testified about?

A. About the same as did those I mentioned. We make them ourselves.

Q. All these gadgets that you were talking about, I suppose, you receive down here in this general receiving room?

A. That is right.

Q. To be transported according to your custom out there into this Stenotype department?

A. Yes, sir.

Q. After the stampings are made, what is the next physical thing that has to be done to manufacture one of these Stenotypes?

A. The stampings are brought into the Stenotype department where machining operations are put on them, possibly holes reamed and counter-bored.

Q. How are those holes bored?

A. In a drill press.

Q. Do you have drill presses for the Stenotype department?

A. Yes, one or two of them, I think.

Q. You have drill presses in there. Go on.

A. Some of the stampings, some key lever stampings are bent to the proper shape on a form in there.

Q. You bend the key lever stampings how?

A. We have what we call a bending fixture in the Stenotype department.

Q. What is a bending fixture?

A. Something to bend something.

Q. I am trying to get a picture of it for the record.

A. Well, it is just a device, manually operated that you clamp the lever in this and bend one end of it to a certain angle and the other end to another angle.

Q. How many of those bending machines do you have?

A. I think there is only one in there.

Q. One is enough to carry on your production?

A. Yes.

Q. It just takes one man to operate it, of course?

A. That is right.

Q. After that process is taken care of, what is the next thing that is done?

A. Well, what do you mean, in what way?

Q. I am trying to have the machine built up now.

A. Well, all of these various component parts that go to make it up——

Q. The gadgets that you were talking about?

A. Yes, purchased parts, let's call them, purchased parts, [fol. 157] as well as the parts we manufacture, are built up into various sub-assemblies which are then built up into a final assembly.

Q. A final what?

A. Into a final assembly, in the Stenotype department.

Q. When you say into a final assembly, is there a line there of people who do one little thing and then somebody else does something else, like we discussed with the Buick louver?

A. Not exactly. It is not exactly progressive as that Buick louver, in other words, in the Buick we first started and went through and at the end we had a Buick louver, and then they went into these dies and they came out all finished.

Q. That is right.

A. In the Stenotype department the various parts are first built up into complete sub-assemblies and then——

Q. The sub-assemblies are assembled?

A. That is right.

Q. Did you tell me how many people were in the Stenotype department?

A. I think around thirty or thirty-five.

Q. You think around thirty or thirty-five. Is that all the processes that go to assemble or make the parts that you make and finish up the Stenotype machine, with the exception of what is done by the punch press department?

A. No, because there is some painting that is not in that.

Q. All right, where is the painting done?

A. We have been having the painted parts of the machine painted by an outside source.

Q. Then there is one time in the process here when parts of the machine are sent out to be painted?

A. That is right.

Q. Is that sent outside of the factory?

A. Yes.

Q. Do you mind telling me where?

A. They were painted in Indianapolis.

Q. Oh, sent clear out of the city?

A. That is right.

Q. Does that complete the picture?

A. So far as the Stenotype machine is concerned.

Q. Yes. These things that we were talking about that are sent out to be painted, that is before they are assembled, isn't it?

A. Oh, yes.

Q. And then after they are painted, they come back?

A. That is the frame of the machine, and the various painted parts that are on it.

Q. And then after they come back from being painted, that is when this assembly process takes place that you [fol. 158] have testified about?

A. That is right. I think there is some assembly work done on parts of the machine in the punch press department, so far as the paper tray is concerned and possibly one or two other little pieces that are riveted together; I think the paper trays are now spot welded. We used to rivet them, but I think they are welded now.

Q. Do you have welders assigned there?

A. We have spot welders, yes.

Q. Those spot welders which you have, are they in this department?

A. No, they are in the punch press department.

Q. Oh, they are in the punch press department. How many spot welders, about how many are there in this punch press department?

A. Three or four.

Q. Now, then, do you use the spot welders for anything else besides work that is done on the Stenotype machine?

A. Oh, yes.

Q. Would you tell me what else you use the spot welders on?

A. The easiest way I could answer that would be to say we use them whenever a welding operation is required.

Q. Well, in this Buick louver, for example, is a welding operation required on that?

A. No.

Q. Can you give us an example of an article that a welding operation would be required?

A. Well, there is some on the Frigidaire.

Q. All right. The Frigidaire. There would be some. Would there be anything else, like those moldings, there is nothing that is—there is nothing about the molding on a running board that would be spot welded, is there?

A. No, we have none.

Q. As a matter of fact, these three or four take care of all of the spot welding that you do out there, don't they?

A. They are at the present time.

Q. When you referred to the paper tray, you mean that little box that is underneath there and holds the paper that is written on by the Stenotype keys?

A. Yes.

Q. In this general set up, it is all under one roof, isn't it?

A. That is right.

Q. And how many superintendents are there at this plant?

A. We have just one general superintendent.

Q. And he is the superintendent over the Stenotype?

A. The entire plant.

[fol. 159] Q. Acme and Lees both?

A. That is right.

• • • • • • •

[fols. 160-161] Q. That is what I am trying to get at. Now, then, the tool room makes tools and dies for all the various capacities that you operate there for the whole plant, do they not?

A. Yes.

Q. What are the duties of the people in the tool room?

A. Well, to make new tools and dies and to repair those already in service.

• • • • • • •

[fols. 162-163] CLAY COLLINS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

By Mr. Sawyer:

Q. Now, pardon me if I am asking this question over: Did you say when you joined the United Automobile Workers?

A. No, I didn't say.

Q. When did you join?

A. I joined in July, or, the last of June, but I paid my dues, the first month's dues in July.

Q. In July of this year?

A. Yes.

Q. Now, are you a member of any committee or do you hold any official capacity in that union?

A. I am vice president of that local.

Q. Are are you a member of any committees?

A. The negotiating committee.

Q. And by "negotiating committee", you mean what?

A. For the negotiation of contracts, and so on, between the union and the company.

• • • • • • •

[fol. 164] Q. Now, at this meeting that you have testified about on August 9th, did you have any conversations with any member of The Serrick Corporation?

A. We did.

Q. There in that room?

A. It was.

Q. Will you tell us what kind of a conversation you had? Don't tell the conversation. Just tell us what kind of a conversation you had.

A. Telephone.

Q. With whom?

A. With Mr. Westlund.

Q. Did you have the conversation with him?

A. I did.

Q. What did you say and what did he say?

A. I called Mr. Westlund's office and asked him if we could meet him that afternoon, and he told me that it was impossible to meet us that afternoon, but he would set a future date.

So I immediately asked him just what date that he would prefer, to make it convenient for him.

So he said the next day at eleven o'clock. That would have been on—that would be Tuesday, the 10th.

Q. When you got into Westlund's office, as you have testified, who was there?

A. Mr. Westlund, Johnnie Lewis, Jess Stillwagon, and there was a lady there that operated a Stenotype.

Q. Mr. Lewis, is that the same John Lewis that has been testified about here?

A. Yes, sir.

Q. The personnel manager?

A. Yes, sir.

Q. And Mr. Stillwagon, he is an official of the company, is he not?

A. Superintendent.

Q. All right. You said there was a lady there with a Stenotype machine?

A. Yes.

Q. Was she operating the machine?

A. She was while we were talking.

Q. You made some mention about this Stenotype operator in there. Did she take notes or did she not, as to your conversation?

A. She took the whole conversation.

By Mr. Sawyer:

Q. Did you see the girl operating the machine?

A. I did.

Q. Do you remember anything else in regard to the conversation there at that meeting between Mr. Westlund, Mr. Lewis, Mr. Stillwagon and any member of your committee?

A. Yes, there was a question brought up as to just who [fol. 165] had the right to belong to our union and who didn't. Mr. Clark said that we took all members that did not have the power to hire or fire, and so Mr. Lewis spoke up and said, "Well, how about the foremen and these assistant foremen that have to take over the job when the foremen aren't there?"

And Mr. Clark said, "Well, they would either have the power to hire and fire, or they haven't," he said, "There isn't any halfway mark about it."

And Mr. Lewis said, "Well, they can recommend to hire and fire."

Mr. Clark said, "Yes, I can do that myself."

Q. Now, where did you go to?

A. We went out where the cars were parked.

Q. Is that off of company property?

A. I don't know whether the company——

Q. Is it outside of the plant?

A. Yes.

Q. What, if anything, took place out there?

A. Well, we, Mr. Clark proceeded to tell the committee what had taken place, and so Mr. Westlund walked up to Harold Sharpe and Mr. Keil out there and says, "Did you fellows ring out before you came up here?"

And he says, "I will be damned if I am going to pay for any time you fellows have lost on this negotiating committee."

Q. To refresh your memory, I will ask you if you weren't laid off the Wednesday following August 10th when you went in on this negotiating committee?

A. Yes, sir.

Q. Was anybody else laid off that was on this negotiating committee, to your knowledge?

A. Miss Keener, I think.

Q. Mr. Truax is a foreman?

A. Yes, sir.

Q. Is it the desire of your organization to have the Board, if the evidence warrants it, to designate your organization as the proper bargaining agency there at The Serrick Corporation without an election?

A. Now, I don't get that question.

Mr. Sawyer: Will you read that question to him slowly, so that he can get it?

[fols. 166-199] (Question read.)

A. Yes.

By Trial Examiner Rockwell:

Q. You understand the question?

A. Yes, I do.

• • • • • • •

[fol. 200] James Mills, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Q. Now, after the strike, were you ever solicited by anybody to become a member of any organization?

A. Yes, sir.

[fol. 201] Q. By whom?

A. Frank Truax.

Q. Anybody else?

A. Mr. Heis.

Q. Mr. Heis? Is that spelled H-e-i-s?

A. Yes.

Q. Who is Mr. Heis?

A. Well, in my estimation he is an assistant foreman in the tool room.

Q. Well, when did he first approach you?

A. Well, I couldn't say just the exact date.

Q. Now, you went back to work right after the time of the strike, did you?

A. Yes, sir.

Q. So, it would have been about on the 7th or Tuesday? That is when the testimony is that they first started going back. Do you remember whether you went back to work on Tuesday or not?

A. Well, I believe I did.

Q. Then, can you tell us from that whether it was Wednesday, Thursday, Friday or Saturday, or the next week, or something like that? Can you give us any idea of when it was?

A. Well, let's see. I think that it must have been on about the Friday after that.

Q. On about Friday after that?

A. Yes, sir.

Q. Now, what did Mr. Heis say to you?

A. What?

Q. Pardon me. First, where did you talk to him?

A. In the tool room.

Q. While you were working?

A. Yes, sir.

Q. While you were on duty?

A. Yes.

Q. Now, what did he say to you?

A. He asked me if I had ever made up my mind to change over to the A. F. of L.

Q. You are a member of the C. I. O., are you?

A. Yes, sir.

Q. What did you say to him?

A. I told him, "No."

Q. Did you have any other conversations with him?

A. Oh, we talked of it at different times at night.

Q. That was on about Friday?

A. Yes, sir.

Q. Did you have any conversations with him along that line the next night, or the next night after that, or anything like that?

A. We couldn't have on the next one, but we did the next week.

Q. You did the next week?

A. Yes, sir.

Q. About how many nights would you say that you had conversations with him, offhand?

A. Oh, I would say three or four.

[fol. 202] Q. Were they shortly following this conversation that you had on Friday night?

A. Yes, sir.

Q. What were those conversations?

A. Well——

Q. Were they about the same thing, or can you tell us exactly what was said?

A. Oh, they were all about the same thing. I couldn't say exactly just what it was.

Q. Well, in substance, what was said at each of these conversations? Was it just like you have related it on Friday, or do you want to add or subtract anything from it?

A. I don't believe that I want to add anything.

Q. All right, sir. Now, did you talk to anybody else out there, or did anyone else talk to you, with regard to soliciting your membership at the same time that you were talking to Mr. Heis?

A. Yes.

Q. Who was that?

A. Frank Truax.

Q. Who is Frank Truax?

A. He is my foreman.

Q. He is your foreman?

A. Yes, sir.

Q. When you were talking to Mr. Truax, was that while you were working, Mr. Mills?

A. Yes, sir.

Q. Was it on company time?

A. Yes, sir.

Q. What did Mr. Truax say?

A. Well, Mr. Truax, Mr. Heis and I was all three talking together at the time.

Mr. Truax says to Mr. Heis, he says, "Give me one of those cards and I will have him sign it up."

That is the only time that Mr. Truax ever talked to me about it.

Q. What card did he refer to? Did he say what cards he was talking about?

A. No, he didn't say, but I know which one he meant when he was talking about it.

Q. Now, what was your conversation about there, just before he said that?

A. Well——

Q. Was it about joining the union?

A. Yes. We was talking about both sides, that is, the C. I. O., and the A. F. of L.

Q. Yes.

A. They tried to talk me into changing over to the A. F. of L. I told them that I wouldn't sign that card or anything else.

Q. That is what they were talking about when Mr. Truax said, "Give me one of those cards", and so on?

A. Yes, sir.

[fol. 203] Q. Did you have any other conversation with Mr. Truax?

A. No, that's all.

Q. That is all he said?

A. Yes, sir.

Mr. Sawyer: That is all.

Q. When was this conversation in which Mr. Truax and Mr. Heis were present?

A. That was on Friday, about, after I went back to work.

Q. That would be Friday—about Friday, September 10th or 11th?

A. I would say it was some place along in there.

Q. All right. What time of day was it?

A. That was at night.

Q. About what time?

A. Along about seven o'clock, I would say, somewhere around in there.

Q. What were you doing at that time?

A. Well, I had went to the machine shop after some more dies.

Q. Where were you in the machine shop?

A. Well, I was right there at the crib where we get the dies.

Q. The tool crib, do you mean?

A. Yes, sir.

Q. Where was Mr. Heis and where was Mr. Truax at that time, Mr. Mills?

A. They were both right there.

Q. At the tool crib?

A. Yes.

Q. Now, who said anything first in that conversation that you are referring to?

A. Why, Mr. Heis was the first one that spoke.

Q. Were Mr. Truax and Mr. Heis standing there together at the time, do you mean?

A. No, Mr. Heis was there, then I came up, and then Mr. Truax came up.

Q. Did you have any conversation with Mr. Heis before Mr. Truax came up there?

A. Not that I remember of.

Q. You said nothing to Heis?

A. No.

Q. And he said nothing to you?

A. No, sir.

Q. Then Mr. Truax came up?

A. Yes, sir.

Q. You stood there and talked?

A. Yes, sir.

Q. Just the three of you?

A. Yes, sir.

Q. How long did you talk, would you say?

A. Oh, I would say for about ten minutes.

Q. Then you did not talk as long as fifteen minutes?

A. Well, it was about ten minutes or fifteen minutes, something like that.

Q. All right. Now, who opened up the conversation at that time, if you remember?

A. Well, I don't remember who started it.

[fols. 204-222] Q. Did you start it?

A. No, sir.

Q. What was the first thing said that you remember of in that conversation?

A. As I remember it Heis asked me if I was ready to change over.

Q. Yes. Was Mr. Truax present at that time, in that part of the conversation?

A. Yes, I believe he was.

Q. Then, what did you say?

A. I told him no, that I wouldn't sign up with the A. F. of L., or anything else.

Q. Is that all you said?

A. Yes, sir.

Q. In that conversation?

A. Yes.

Q. Then, what was said next by anybody else in that conversation that you remember?

A. I don't know.

Q. What?

A. I couldn't say.

Q. Was that all of the conversation?

A. I don't remember just all of it, because we talked at different times, you know.

Q. I am talking about this first time. I am still confining my question to the first time.

A. Yes, I believe that's about all there was to it.

Q. That took you about fifteen minutes, did it?

A. ——.

Q. Frank Truax is foreman of what department?

A. He is foreman of the heading department.

Q. And also of some other department?

A. Yes.

Q. What is the other department?

A. He got the whole screw department.

Q. Now, Mr. Heis is, according to your testimony assistant foreman in the tool room?

A. Yes, sir.

* * * * * * *

[fols. 223-224] GILBERT CLARK a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified as follows:

[fol. 225] By Mr. Sawyer:

Q. Now, Mr. Clark, is it the desire, and are you requesting that your organization be certified as the proper bargaining for the union setout in the petition without an election?

Mr. White: I object to that.

A. Yes, sir.

Mr. White: Wait a minute. I object to that for the reason that this witness has not been shown to be a competent witness to answer that question.

He is not an officer of Local No. 459. I do not know what, "Organizer," or, "Representative," means; but the petition here is that Local No. 459 of the International Union, United Automobile Workers of America be designated as the bargaining agency.

He is not shown to be a member of that particular subdivision or that he has anything to do with it.

Trial Examiner Rockwell: I will allow the question.

Mr. Sawyer: All right. Did he answer the question?

(Record read.)

The Witness: Yes, sir.

Trial Examiner Rockwell: I have just one question.

Examination by the Chair.

By Trial Examiner Rockwell:

Q. My understanding is that that truce agreement that was signed and attached to the Judge's order in this case, which caused the end of the strike, provided that the parties would proceed with an election. I have not that agreement here. Just a second. Let me get that.

Do you remember this agreement?

(Handing document to the witness.)

A. Yes, I remember the agreement, but I do not remember the details of it.

By Trial Examiner Rockwell:

Q. Paragraph 4, of this agreement, which was dated September 3rd, provided:

"It is agreed that the plant of the plaintiff company shall be permitted to operate without interruption on the part of any person or persons, and the strike now in progress shall be suspended, pending an election to be held at [fol. 226] such time and place as the Labor Relations Board may determine."

Now, following the reopening of the plant, at the strike, what negotiations, if any, did you have with the company, or with the International Association of Machinists, regarding an election?

A. Oh, I don't know as we had any. We have agreed to an election, but they disagreed.

I don't know whether it is proper to say that or not.

Mr. White: I think I can make an explanation that would probably clarify what is in the Examiner's mind on this subject:

At the time this matter came up for settlement in the Circuit Court, Judge Guthrie had called Mr. Cowgrill, the Regional Director of this District for the National Labor Relations Board, and Judge Guthrie informed those there present that Mr. Cowgrill had informed him, the Judge, that a petition had been filed by the union here.

Mr. White: Yes, this bargaining agency. And that there would be a hearing upon that matter within ten days or two weeks, and an election, or words to that effect.

As I understand it, and that is the reason that was placed in the agreement. Is that right, Mr. Brady?

Mr. Brady: I might add, for the sake of the understanding of the Examiner, that Mr. Cowgrill said that there would be an election within two weeks from that time; and with that understanding and belief the Judge entered this paragraph, being Paragraph No. 4, and we agree to Paragraph Four.

Trial Examiner Rockwell: I do not understand from the testimony of Mr. Clark, or anybody else, that there was any discussion or negotiations concerning an election after the reopening of the plant. Is that right?

Mr. White: There has been no attempt on the part of any of the parties to negotiate concerning an election.

It was more or less the understanding, I think, that an election would automatically follow the hearing that had taken place.

Mr. Brady: Except the statement was made, at the time this agreement was entered into, that three agreements had been prepared for an election, each of which Local No. 459 of the United Automobile Workers of America had signed; [fol. 227] and that they then were willing to proceed on any one of those agreements, if the other two, that is, the company or the machinists, would sign it.

Trial Examiner Rockwell: Is that agreed to?

Mr. White: I do not remember about that particular statement. They may have agreed. I would not say that they did not.

Trial Examiner Rockwell: I think we have evidence upon that, except the evidence that the U. A. W. A. has signed these agreements, two of which are in evidence.

Mr. White: I think the third agreement that has been mentioned here all the time is really—well, the second and third—the second one was an agreement proposed for the

Acme-Division; and the third was for the John Lees Division. Is that right?

Mr. Brady: I am not sure about that third agreement.

Trial Examiner Rockwell: The one signed by Mr. McDonald applied to the whole plant.

Mr. Brady: Yes.

Mr. White: There was one drawn up by the company, I think, and the United Auto Workers Two were signed, one applying to the Acme Division and one applying to the Lees Division.

Mr. Brady: That is right.

The Witness: There was another reason, that there were no negotiations for an election after the strike.

By Trial Examiner Rockwell:

Q. You tell us what that reason is?

A. It was the interference, which has been brought out here. We deemed it necessary for a hearing, on account of the intimidation and interference.

By Trial Examiner Rockwell:

Q. Your position is that the situation may have changed regarding the election?

A. Yes. My position is this,—or our position is—the union, that is, that we had a majority when we presented the contract, and we didn't know what we had afterwards.

We did not know how many people had been intimidated.

They came up, telling us that they were offered more money to join the A. F. of L. They were intimidated, coerced and laid off. They were sent to me; so we had a lot of people that were frightened the opposite way, and so forth.

[fol. 228] Harold Sharpe, a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified as follows:

Redirect examination.

By Mr. Sawyer:

Q. You are the same Harold Sharpe who has been on the witness stand once before in this trial?

A. Yes, sir.

Q. Now, during the time you worked for the Acme-Lees, before the Serrick people took it over, where did you work? What work did you do?

A. I was factory supervisor,—or one of the supervisors.

Q. Were you acting in that capacity up until the time that you left and went over to the Indiana Pressed Steel?

A. I was.

Q. Now, during the time you were acting as supervisor, or one of the factory supervisors, what did the Acme Machine Products Company make? About the same thing that they do out there now?

A. Well, the Acme Machine Products Company made both of assorted sizes, as well as being a part supply plant, manufacturing gears. Acme Sure Flow Pumps, which is used on machine installation and stearing knuckles, spindle bolts and punch press parts.

Q. Now, as factory supervisor, were you or were you not acquainted with all of the different operations there in the plant of the Acme Machine Products Company?

A. Yes, sir.

Q. Did they have a tool room in there?

A. Yes, sir.

Q. A tool room and a die room?

A. Yes, a tool room and a die room.

Q. Were you acquainted with that?

A. Yes, sir.

Q. Now, then, Mr. Sharpe, what did they do in the tool and die room?

Mr. White: I think I will object to what was done in the tool and die room under the old Acme Machine Products Company. I cannot see that it is material in this case.

Trial Examiner Rockwell: What is your purpose in trying to show that, Counsel?

[fol. 229] Mr. Sawyer: The purpose of that is to show that this witness has knowledge of this factory, and this particular tool and die room, and his competency to testify as to what took place and what was done in the tool and die room there, how this company came in, and what orders they gave him, and then how it is brought down to the present time. If it is not competent——

Trial Examiner Rockwell: This is on the question of the proper unit, is it?

Mr. Sawyer: Yes.

Trial Examiner Rockwell: And it is on that question alone?

Mr. Sawyer: On that question alone.

Trial Examiner Rockwell: I will allow that.

Mr. Sawyer: All right. Now, what was my question? Please read it.

(Question read.)

By Mr. Sawyer:

Q. Answer the question?

A. It was for the sole purpose of manufacturing and maintaining tool equipment, the keeping up of all tool repairs and die repairs, and the making of new tools.

Q. Now, how many different departments in there, that is, as to whether a majority of the departments or less than a majority, would you make tools and dies for?

A. At that time I would say that there were about seven or eight different departments.

Q. That you made dies and tools for?

A. Yes, sir.

Q. About how many departments were there in the plant which you did not make tools and dies for?

A. Well, that would only exclude possibly the shipping room and the receiving room.

Q. Then, if I understand you, the tool room made tools and dies for almost every department?

A. That is right

Q. You were acquainted with the work?

A. Yes, sir.

Q. Now, the processes of production out at the Serrick plant, do you have separate work in the tool room, for any other purpose than to make things for these various machines that are located there in the plant? I mean by that, do you make anything in the tool room that is sold, like dies or bits that are sold on the market to outside concerns?

[fols. 230-232] A. No, not while I was there, there was nothing made for anyone outside.

Q. Can you give us a picture of the production out there now, just briefly, not in full, but just to show us how your work is related to production?

A. Well, primarily the tool room is the beginning of pro-

duction. Without the tool room, without tools and dies there cannot be any production.

First the tools, jigs, fixtures and dies must be made, then taken out on production and used, and then they are repaired as is seen fit.

Q. Every time a new pattern of something is made there has to be a die made so it can be cut?

A. Yes, sir.

Q. That is the start of production?

A. Yes, that's right.

Q. If I understand your testimony it all flows from there to the finished product?

A. Yes, sir.

Q. Now, with reference to the location of this tool and die room, where is that located?

A. I would say that the tool room is located approximately in the center of the plant, or possibly a trifle to the north of the center of the plant.

Q. Yes. Now, about how many men work in there, if you know?

A. In the tool room?

Q. Yes?

A. I think there was all told, on the three shifts, something like between sixty and sixty-five. I don't know just exactly how many.

Q. Now, are there any physical partitions between the tool room, or anything like that? I mean, is there a wall around it, or anything like that?

A. Well, there is a fence, a wire fence.

Q. What are the dimensions of that?

A. I would say it was about five feet high, that is, four and one half or five feet, a fence that goes around the entire tool room.

Q. That is all the division there is between it and the rest of the physical plant?

A. Yes, that is all the division there is between it.

Q. All right. That is all with reference to the tool room I am going to ask you.

* * * * * * *

[fol. 233] Then after that Mr. Birod——

Q. What was his first name?

A. I- was Mose or Moses, I don't know which.

Q. Yes.

A. He approached me at a later date and asked me if I wouldn't consider joining the A. F. of L.

I said, "Mose, I haven't thought much about it." Then Mr. Shock——

Q. Who was Mr. Shock?

A. It was Mr. Cecil Shock.

Q. Who is he?

A. He is another employee in the tool room.

By Trial Examiner Rockwell:

Q. How do you spell that last name?

A. S-h-o-c-k, I think it is. Then Mr. Shock and Mr. Baker,——

By Mr. Sawyer:

Q. Is that Arthur Baker?

A. Arthur Baker.

Q. Who is he?

A. A die maker in the tool room.

Q. Yes?

A. They asked me if I was going—if I wasn't too far out on a limb.

Mr. White: That was already testified to.

By Mr. Sawyer:

Q. Was that already testified to by you, Mr. Sharpe, do you remember?

A. Well, I will leave out that expression, then, "Too far out on a limb."

Trial Examiner Rockwell: Oh no. Did you testify to this incident about Mr. Birod?

A. No sir, I did not, not about the one I am just going to state.

Trial Examiner Rockwell: All right.

Mr. Sawyer: You see, the witness had two or three conversations with him.

Trial Examiner Rockwell: All right. Go ahead.

[fol. 234] By Mr. Sawyer:

Q. Continue, Mr. Sharpe?

A. So Mr. Shock said to me, he said, "Well, Sharpey, I think you want to get on the right side because," he said,

"I will tell you this right now: I have known Mr. Murphy ever since I was a kid, and I know from what he told me that he absolutely would not recognize the C. I. O.; that he would close this plant down first. He has a yacht, and he would get on his yacht and take a long fishing trip."

By Trial Examiner Rockwell:

Q. Who said that?
A. Mr. Shock.
Q. Did he say that Mr. Murphy told him that?
A. He said that he knew Mr. Murphy ever since they were boys, and he said, "I know what he will do."

By Mr. Sawyer:

Q. Did he say that Murphy would do it, or that he knew what he would do?
A. He said that Mr. Murphy had said that he would close the plant down, that he would get on his yacht and take a long fishing trip.
Q. Now, this Mr. Birod, or, "Mose," as they call him—is that it?
A. Yes.
Q. Yes. Did you have any other conversation with him that we have not already talked about?
A. Well, we had various conversations. Several times I would be approached in this manner: Mose would come to me—we certainly never did assume the attitude of enemies; it was always as friends.

He would come to me and he would say, "Sharpey, regardless of the outcome, you and I are going to be friends."

He said, "I don't want anything political to come in between our friendship."

Those kind of remarks would go along with the conversation, and as to whether I would get on their side, or play ball, so as to speak.

Q. I see. That is all that you remember of the conversation with Mose Birod, is it?
A. Yes, except the other testimony I gave.
Q. To refresh your recollection I will ask you whether Mose Birod ever told you that he was acting with the consent or express orders of Mr. Murphy or Mr. Stillwagon, or any other official?
A. Mr. Birod did tell me that while he was soliciting

memberships for the A. F. of L. that Mr. McCoy knew what he was doing.

[fol. 235] Q. Who was Mr. McCoy?

A. He was the tool room foreman. He said, "Mack knows what I am doing." He said, "Mack is an old A. F. of L. man himself."

He said, "He wants us to get in the A. F. of L., but he don't want us to have anything to do with the C. I. O."

Q. Now, do you remember any other conversations with Mr. Birod or the other men you talked about?

A. Well, Mr. Baker, Arthur Baker approached me one morning——

Q. Now, let us get it straight as to who this Mr. Baker is. I guess we have that. Go ahead.

A. He was a die maker in the tool room.

Q. What is that?

A. He was a die maker in the tool room and die room. He approached me one morning and he said——

Q. Can you tell us when this was?

A. I would say that it was around, possibly between the 1st and 5th of September.

Q. Yes?

A. He came to me and he said, "Sharpey——"

Q. That is, 1936?

A. Yes, it was this last September.

Q. Oh, the last of September, 1937?

A. September, 1937.

Q. Go ahead?

A. He said to me, "Sharpey, personally I don't care for any organizations."——

Mr. White: Now, just a minute. I believe that I will object to that conversation. That was long after this witness ceased to be an employee of the company.

By Trial Examiner Rockwell:

Q. Where did you have this particular conversation, Mr. Witness?

A. In the tool room.

Q. What were you doing in there?

Mr. Sawyer: Wait a minute. Did you say that was in September?

A. August, I meant to say; around from August 1st to the 5th. I beg your pardon.

By Trial Examiner Rockwell:

Q. Mr. Baker was an employee of the company in the tool room, was he?

A. That is where he is.

Q. But he is not a supervisor?

A. No, sir.

Q. Or an assistant foreman?

A. No.

Q. Was this during working hours?

A. Yes, sir.

Q. Go ahead.

A. Between August 1st and August 5th Mr. Baker approached me one morning and he said, he said, "Sharpey, I personally don't care for any organizations." He said, [fol. 236] "We can get along very nicely without any union at all."

I said, "I agree with you." He said, "Here is the thing," he said, "I know that the company will not recognize the C. I. O."

He said, "I think that the best thing that we could do is to organize, to get an organization of our own, just for the tool room, and leave the Welfare Association out, the C. I. O. or the A. F. of L."

He said, "I think I am going to talk to some of the boys to see if we can't get an organization of our own."

He said, later, several days later at the A. F. of L. contract, or the time that the contract had become the topic of discussion, he said, "Well, after we get an organization and our contract signed," he said, "It won't amount to anything at all. It will just keep out the rest of them, then we will go on just like we did before."

By Mr. Sawyer:

Q. Now, did you have any other conversations with any foremen or officials of the company?

A. Well, not other than I said in my other testimony that I gave here.

Q. Well, that is the general part of it, then?

A. Yes.

Mr. Sawyer: That is all.

Recross-examination.

By Mr. White:

Q. Now, Mr. Sharpe, this conversation that you had with Mr. Birod about Mr. Murphy's yacht: ——

Trial Examiner Rockwell: That was Mr. Shock, wasn't it?

Mr. White: Oh, was that Shock?

The Witness: I beg your pardon.

Trial Examiner Rockwell: Yes.

By Mr. White:

Q. The conversation that you had with Mr. Shock about Mr. Murphy's yacht: Where was that?

A. In the tool room.

Q. In the tool room?

A. Yes, sir.

Q. In what part of the tool room?

A. It was in the northwest end of the tool room.

Q. Was it at your machine?

A. It was at my bench.

Q. At your bench?

A. Yes, sir.

Q. Who was present?

A. Mr. Shock and myself.

[fol. 237] Q. What was that conversation again?

A. Why, Mr. Shock and I, we had been talking about the Acme-Lees Welfare Association, and I told him that I was going to resign. The substance of the conversation was, I said, "I am going to resign from the Welfare Association."

He said, "Well," he said, "I think that is the lesser of the two evils, the Welfare Association and the C. I. O., because," he said, "I know Mr. Murphy." He didn't call him "Mr. Murphy." He called him by his first name, and I don't remember that, what his first name is; but, anyhow, he said, "I know Mr. Murphy, and I know," he said, "How bullheaded he is. I know that he will not recognize the C. I. O. He has told me that he hasn't had a vacation anyhow, and that he would lock up the plant, get on his yacht and take a nice fishing trip."

Q. Now, Harold, did they make anything in the tool room other than tools and dies?

A. Other than tools and dies?

Q. Yes, if you know?

A. I don't know anything that they could make in the tool room other than tools and dies, and maintenance equipment.

Q. There are no bolts or screws made there for sale orders?

A. No, sir.

Q. And no automobile parts of any kind?

A. Not in the tool room.

Q. And there are no refrigerator parts or any other type of parts made in there?

A. No, sir.

Q. The only things made in the tool room are tools and dies which may be used on production machinery in the plant, is that right?

A. That is right.

Q. Now, how long does it take a tool and die maker to learn the tool and die making trade?

A. Well, you never learn it.

Q. Well now, you are familiar with the plant as a whole out there, aren't you?

A. Yes, sir.

Q. It takes four or five years for one working in the tool room to be considered a first-class tool maker, don't it?

A. I think usually the apprentice is rated by months and hours of training to become a journeyman tool maker, in something like three or four years.

Q. You are familiar with the operations of the rest of the employees throughout the plant, aren't you?

A. Familiar with the operations?

[fol. 238] Q. Yes?

A. Well, I haven't done all the operations, but merely from observing them as a mechanic I am familiar with the operations.

Q. Are there any production workers out at the plant that are required to have three or four years experience to operate a machine anywhere in the plant outside of the tool room?

A. Well, in some cases, even on production, the more experience you have the more valuable you become.

Q. There is hardly a job in the whole plant that you cannot learn to operate in two or three weeks outside of the tool room, is there?

A. Oh yes, any number of them.

Q. In that phase—in what department?

A. Well, specifically, I would say in the roll department and in the screw department.

Q. Well, the great mass of the people employed out there in production lines are not required to be experienced operators, are they?

A. As a general rule, on the Acme side of the plant, in the screw division, they are more or less experienced operators because it is a matter of training on those jobs.

It does take months to make an operator, an efficient operator in the screw department; and as much as I know, with what experience I have had on the John Lees side, it does take months on the John Lees side to develop a real efficient man, because the work there is quite delicate.

Q. It takes months to do that?

A. I would say it takes several months to make a man where he would be absolutely capable of being efficient.

Q. But in the tool room it takes several years, then?

A. That's right.

Q. Now, what is the fact as to whether or not production employees, during the time that you have worked in the plant, are allowed in the tool room?

A. I didn't get that.

Q. What is the fact as to whether or not, during the time you were working at the plant, production employees were allowed to go into the tool room?

A. That is so to the extent that various departments have their setup men, and these setup men, it is their duty to see, as well as to foremen, of course, to see that the particular jobs to which they are assigned, to install on their machines, are in order.

[fol. 239] Quite often they have to bring those jobs into the tool room to get them repaired, and then they come and get them and take them out.

By Mr. Sawyer:

Q. That is, the setup men?

A. The setup men and foremen.

By Mr. White:

Q. And the foremen?

A. Yes.

Q. I see. But the general production employees are not allowed in the tool room, are they?

A. The operator—it is customary in almost all plants—the fact of the matter is in all plants I have ever worked in, where the operator himself is, usually it is against the rules for him to go to the tool room; but sometimes it is violated in all plants.

Q. That is the rule in practically all of the plants you ever worked in?

A. Yes, sir.

Q. Now, this tool room that you are testifying about is about what size?

A. Well, just off hand I would say, Walter, it takes in about—I don't whether it takes in two or three gates—that is, north and south—which would be, I would say, around—well, I would say around 100 feet. That is, I may be off 25 feet. I don't know; but it takes——

Q. It is surrounded by a fence?

A. Yes, sir.

Q. Then there are some gates in the fence?

A. Yes, that is right.

Q. How many gates?

A. There was three at the time I was there.

By Trial Examiner Rockwell:

Q. The tool room itself is not a separate room, is that correct?

A. Pardon me?

Q. The part of the plant referred to as the, "Tool room," is not, really, a separate room, is it?

A. It is separated from the rest of the plant. It is not a room, but it is separated from the rest of the plant by a wire fence which I would say was around four and one-half feet high.

Q. You would say that the tool and die makers are men that are highly skilled workers in the entire plant?

A. Well, yes, I would say that they were most highly skilled.

Q. Would you say that they were more highly skilled than buffers and polishers?

A. Yes, I do, because there is no comparison between the two trades. What I mean is there is no link whatsoever between them.

[fol. 240] Q. Are the buffers and polishers more highly skilled than the average production employee?

A. Yes, they are more highly skilled.

Q. You are familiar with the type of work they do, are you, Mr. Witness?

A. Yes, the technique of the work requires quite a bit of training.

S. D. MURPHY, a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified as follows:

Redirect examination.

By Mr. Sawyer:

Q. State your name?

A. S. D. Murphy.

Q. Mr. Murphy, this testimony about the buffers and polishers, I will ask you whether or not they have a contract with your company for their vocation?

A. They have.

Q. Do you remember when that was signed, or about when the last contract was signed?

A. It was signed in the latter part of March.

Q. What year?

A. 1937.

Q. Now, before that time, didn't they have a contract, Mr. Murphy?

A. Not that I know of. Not that I am aware of.

Q. I was under the impression that this was a renewal of another contract; that they had had a contract for a number of years; am I wrong about that?

A. Yes, that is correct.

Q. You do not know whether they had a contract in there for several years under the Acme or not?

A. No, I don't.

Q. I see. At any rate, there was a contract signed in March of this year?

A. Yes, sir.

Q. If you know, was that before Mr. McDonald's organization or Mr. Clark's organization, that is in controversy here, was ever in the picture; is that right?

A. That's right.

Q. Now, just describe the room in which the polishers and buffers carry on their trade?

A. Well, that room is entirely enclosed by partitions, and the room is approximately 75 by 125 feet.

By Trial Examiner Rockwell:

Q. Feet you mean?

A. Feet, yes.

[fol. 241] By Mr. White:

Q. Yes.

A. And all of the polishing operations, or practically all of the polishing operations are carried on there.

Q. What is that?

A. All of the polishing operations, or practically all of the polishing operations carried on in the plant are done in that room.

* * * * * * *

Q. Are the rates of pay in the tool room in general higher than they are for the average production worker?

A. Considerably higher.

Q. I see. What is the top rate that is paid in the tool room, do you know offhand?

A. About $1.30 an hour.

Q. $1.30 an hour?

A. Yes, sir.

[fols. 242-250] Q. Do you know offhand what rate is paid the workers, what I would call the production workers?

A. Well, some of those workers are on a piece work basis. We do have a few production workers in the screw division that make as high as $1.50 an hour.

Q. As high as $1.50 an hour?

A. Yes, sir.

* * * * * * *

[fol. 251] S. D. Murphy a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. White:

* * * * * * *

[fols. 252-264] Q. Now, Mr. Murphy, calling your attention to August 3rd, of this year, 1937, you may state whether or not you had a conference with any person or persons concerning the proposed contract with the tool and die makers in the Muncie plant?

A. I did.

Mr. Sawyer: What was that date, Walter?

Mr. White: August 3rd.

Mr. Sawyer: Thank you.

By Mr. White:

Q. When did you first learn that such a contract had been proposed, Mr. Murphy?

A. The date?

Q. Yes. When was it?

A. I believe it was about August 2nd, possibly.

Q. How did you learn it?

A. Through a discussion or conversation with Mr. Westlund, who told me that such a contract had been proposed or would be proposed.

Q. What time of day did the conference take place on August 3rd, which you have mentioned?

A. I believe it was in the afternoon.

Q. Who was present?

A. Mr. Westlund, Mr. McCoy, Mr. Wise, Mr. Shock, Mr. Baker, Mr. Keil and I believe Mr. Fouts.

Q. Where did this conference take place?

A. In my office.

* * * * * * *

[fol. 265] Q. Your recollection is that the conference on the afternoon of August 3rd, attended by the various employees as well as yourself, had been planned before that conference between Mr. McDonald and Mr. Westlund?

A. I think it had.

Q. Now, what time do you recall it was that afternoon that the conference occurred?

A. Well, it was sometime between, I would say, three and five o'clock.

Q. What time did it start, would you say?

A. Oh, I would say three o'clock or a little after.

Q. Do you recall whether or not you had any conference

with Mr. Westlund after his interview with Mr. McDonald and before the afternoon conference started?

A. Well, he told me, I believe, that Mr. McDonald had been out that morning. He called me up once. As I say, he was the man, fundamentally, that would decide whether or not the provisions of the workmen were all right.

Q. Now, who actively arranged the afternoon conference? That is, who told the men to be present, and so forth?

A. I think I did. I am not certain about that. I don't know whether I told all of them or not.

Q. How did you pick the men that you did pick?

A. Well, those were the men, so Mr. Westlund told me, that were on the committee, or were instrumental in their discussion with him.

Q. That is, with Mr. Westlund?

A. Mr. Shock, I understood, was one of the acting members. I think he was president. I am not sure.

Q. How did you happen to pick Mr. Keil, for example, Mr. Murphy?

A. He was one of our employees.

Q. Well, did you inquire as to whether or not these men were members of the A. F. of L. that you picked, or did you pick out what you considered representative employees?

A. I did not inquire what their affiliations were.

Q. Your plan was not to pick out A. F. of L. men, but men you knew personally in the machine shop, is that correct?

A. Yes, sir. You see, all of those men had worked with us a long time.

Q. Were all of these men working on the day shift, do you know? Or do you recall?

A. I think they were, but I am not sure about that. I think they were.

[fols. 266-268] Q. This meeting that you held, was that meeting held during working hours as far as they were concerned?

A. I think it was. Now, they might have gone out at 3:30. I am not certain of that; but as to a part of them it was during working hours.

Q. Did you go out into the tool room and approach these men personally?

A. No, I think I called Mr. McCoy and told him to do it.

* * * * * * *

[fols. 269-274] A. F. WESTLUND, a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified as follows:

Direct examination (Continued).

[fol. 275] Q. Who was Mr. McCoy?

A. Mr. McCoy is the tool room foreman.

Q. Who else did you call in?

A. Mr. Walter Dominek.

Q. Walter Dominek was what?

A. He was the assistant tool room foreman.

Q. Let us find out if that is the same Walter Dominek who, until about three weeks prior to August third, was the foreman over the Acme Division of the tool room?

A. Well, we have——

Q. Well, is he or isn't he?

A. He is the assistant foreman in the tool room.

Q. Had he been foreman of the Acme Division of the tool room until approximately three weeks prior to the third day of August, 1937?

A. What was that question?

Mr. Brady: Read it, please.

(Question read.)

A. Prior to which date?

Q. Prior to the third day of August, 1937?

A. I cannot understand your question. I don't understand it.

Q. Was Walter Dominek ever foreman of the Acme Division of the tool room of your plant? Can you understand that question?

A. Yes, I can understand that question.

Q. All right. Just answer it, please.

A. He was the foreman in charge of the work that is done for the Acme Division.

Q. In the tool room?

A. In the tool room.

Q. And at the same time he served in that capacity, did Mr. McCoy serve as foreman of the Lees work in the tool room?

A. No, our organization in the tool room, when we first came to Muncie——

Q. No, I am not asking you about when you first came to Muncie.

A. I will have to explain that in order to explain this division thing.

Q. I would like to know who was foreman up to about three weeks before the third day of August? That is what I want to get at?

A. Mr. McCoy was foreman of the tool room.

Q. Did you have two foremen in there?

A. No, Mr. McCoy was the only foreman.

Q. What was Mr. Dominek?

A. He was assistant.

Q. Were they on different shifts?

A. No, the two of them were on the same shift.

[fols. 276-277] Q. But one had charge of the Acme Division work and one had charge of the Lees work, is that right?

A. Mr. Dominek has charge of the work under Mr. McCoy.

Q. Now, did you change that setup approximately three weeks before the third day of August, 1937?

A. No, sir.

Q. Did you change it at all?

A. Not in so far as Mr. Dominek was concerned. Mr. Dominek succeeded a Mr. Compton as assistant to the tool room foreman.

Q. Then right up at this time, that is, the time of the conference you are talking about here, you had Mr. Dominek and Mr. McCoy, both of them, in that tool room, did you?

A. That is right.

Q. In a supervisory capacity?

A. That is right.

Q. One of them looking after the Acme Division work and the other looking after the Lees work?

A. No, that is not right.

Q. Didn't you testify a minute ago that Mr. Dominek had charge of the Acme work——

A. That is right.

* * * * * * *

[fols. 278-283] Q. Well now, let us go over to the afternoon of August 3rd.

A. All right.

Q. Do you recall the meeting of yourself, Mr. Murphy and some of the men in Mr. Murphy's office?

A. That is right.

Q. Do you remember that conversation?

A. Yes, sir.

Q. Who was there at that time?

A. Mr. Murphy, Mr. Wise, Mr. McCoy, Mr. Cecil Shock, Mr. Rudolph Keil, Mr. Walter Fouts and myself.

Q. And that is all?

A. That is all.

Q. Now, of that group that was there, Mr. McCoy was a foreman, was he not?

A. Yes, that is right.

Q. Mr. Wise was a supervisor?

A. That is right.

Q. Mr. Murphy was vice president?

A. That is right.

Q. And you were works manager?

A. That is right.

Q. That left Mr. Shock, Mr. Keil and Mr. Fouts who were employees, did it not?

A. That is right.

Q. Now, at that time, had you been told by Mr. McDonald who were the members of the committee?

A. No, sir.

Q. You did not have Mr. Birod or Mr. Wheeler in there in that conference, did you?

A. No, I did not.

Q. But you did have three employees out of the tool room and four supervisors or officials of the company in that meeting, didn't you?

A. That is right.

Q. All right. Now, what was said there, Mr. Westlund, at that meeting?

A. Mr. Murphy opened the conversation.

Q. What was said?

A. He stated that he understood from me that a contract had been presented.

Q. Yes?

A. Then we called these three men in to get their viewpoint on that contract, and discuss it with them.

* * * * * * *

[fol. 284] A. F. WESTLUND, resumed the stand as a witness on behalf of the Respondent, and having been previously duly sworn, testified further as follows:

* * * * * * *

[fol. 285] Q. Now, upon receipt of that telegram did you send for one of the committee men?

A. No, I sent for Mr. Wise.

Q. I see. Now, Mr. Wise is your supervisor in the tool room, is he?

A. He is the supervisor of all tooling work.

Q. Yes. Did he belong to that union?

A. Well, no. Mr. Wise is a member of the management.

Q. Yes; but he is the man that you sent for?

A. That is right.

Q. What did he say to you?

A. I told him that I had received the wire——

Q. Yes.

A. (Continuing) —accepting the proposition from Mr. Murphy and Mr. Serrick, and asked him to notify the committee.

Q. Yes. Did he take the wire?

A. Not at that time, no.

[fol. 286] Q. Well, what was the next thing that was done then?

A. He went out and apparently told them, so far as I know, that we had received this wire.

Q. Well, you were not there and you did not hear what he told them, did you?

A. No, sir.

Q. Did he come back in then?

A. He came back in the office.

Q. What did he say when he came back in?

A. That the committee desired the loan of the wire to take it to their meeting that evening.

Q. What committee?

A. The shop committee of the American Federation of Labor.

Q. Who was on that committee, if you know, at that time?

A. Mr. Birod was on that committee and Mr. Wheeler, as I remember it.

Q. Those are the only two you knew of?

A. Those are the two I know of right now. I know the men.

Q. At any rate, then you gave the wire to Mr. Wise, did you?

A. Yes, sir.

Q. And he left your office with it?

A. Yes, sir.

Q. Then on August 7th did Mr. Wise again come to your office, Mr. Westlund?

A. No, sir.

Q. Who did?

A. Let me think a second, will you?

Q. Yes.

A. I believe I am in error there. I believe Mr. Wise did come to my office.

Q. Yes.

A. That is right, he came to my office.

Q. That is what you testified to yesterday.

A. Yes.

Q. What did he say to you?

A. He told me that the committee would like to see me with regard to the meeting that they had the night before.

Q. That was on the morning of August 7th?

A. Yes, sir.

Q. About what time?

A. Oh, I should say, about—I should say that it was somewhere between eight and nine o'clock.

Q. Did you consent to see them?

A. I did.

Q. Did you see them?

A. I did.

Q. Where?

A. In my office.

Q. And who did you see?

A. What is that?

Q. Who did you see?

A. Mr. Birod, as I recall it, and Mr. Wheeler of the committee; two or three men of the committee.

[fols. 287-299] Q. Well, now, was it two men or three men? Do you remember which it was?

A. No, I am not sure of that now, whether it was two or three.

Q. I see.

A. It was three, I think.

Q. Well, can you remember who the third man was right now who was there?

A. No, I cannot remember that.

Q. The only two you remember are Mr. Birod and Mr. Wheeler; is that correct?

A. That is right.

Q. All right. What did you say to them and what did they say to you on the morning of August 7th?

A. Why Mr. Birod I believe was the only man who spoke during this time.

Q. Yes.

A. And he said during the meeting on the evening of the 6th that their organization had voted to accept the 44 hour revision in the contract.

Whether he used the word, "Revision," or not, I do not know, but that was the purport of his conversation.

Q. What did you say?

A. Well, I told him that I was glad he had.

• • • • • • •

[fol. 300] Q. How long have you known Mr. Birod and Mr. Wheeler, or how long have you known them prior to August 6th?

A. Well, Mr. Birod was in our employ at the John Lees Company at Indianapolis, approximately ten years ago, and he worked for us at that time.

He has worked off and on for us at the John Lees Company plant in Indianapolis, and he came to work shortly after we moved up here to Muncie, Indiana, and then he worked for us again.

Q. What about Mr. Wheeler?

A. I have not known Mr. Wheeler so very long. It has not been so very long.

Q. What about Mr. Shock?

A. Mr. Shock was in the employ of the John Lees Company at Indianapolis as early as 1927, or ten years ago. I am very well acquainted with Mr. Shock.

On a number of occasions in the past ten years it has been necessary for us to work out a lot of special problems in the tool room, in connection with the development of new products, particularly mouldings which are formed and bent, and there have been occasions when Mr. Shock, Mr. Baker and myself and Mr. Murphy have worked all night together trying to work out problems of that nature, so that I am very well acquainted with Mr. Shock and I know his characteristics.

• • • • • • •

[fol. 301] Q. After the U. A. W. A. had been in to see you on the 10th, did you make any additional checks of the A. F. of L. membership in the tool room?

A. Yes. I talked to some of my good friends in the tool room who worked together with me for years and asked them if they had a majority in there as to membership, and I was told by these men that they did have a majority. I did not have any reason to doubt it, and I couldn't see any harm in anything as far as the management was concerned.

I was interested in trying to get some work out of the tool room. They were more or less disorganized out there.

We were not getting the work through as we should get it through.

[fols. 302-304] That is how I knew, primarily, about the customers not getting deliveries. The tooling program was not going the way it should. At that time it was a very particular part of our program to get these tools lined up for the next season.

Q. All of that did not mean that anybody in the tool room was going to join the A. F. of L.?

A. No, sir.

Q. That situation was not related to the A. F. of L. membership, was it?

A. No, sir.

Q. Now, whom did you talk to?

A. I talked to Mr. Baker, I talked to Mr. Fouts and I talked to Mr. Dininger. Of course, I talked to Mr. Shock again, and I questioned Mr. Birod again.

Q. This was after the committee of the U. A. W. A. had met with you on the 10th, was it?

A. That is right.

Q. You had not told us about those conversations before, had you?

A. (No answer.)

Q. On your direct examination or your cross-examination, did you mention those conferences?

A. The conversations with these men?

Q. Yes, after the meeting of the 10th?

A. I don't believe I did.

Q. I do not recall that. Your conversations with these men were as to the membership of the A. F. of L. in your opinion?

A. That is right.

Q. I suppose they were also as to membership in the C. I. O.?

A. I beg your pardon? I did not hear the question.

Q. I say, I suppose you also asked them about membership in the C. I. O., the men in the tool room at that time?

A. No, I did not. I merely asked them to tell me if they had a majority of the membership, and they told me that they had.

* * * * * * *

[fol. 305] Oscar McCoy, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. White:

Q. You may state your full name, please, Mr. McCoy to the Examiner?

A. Oscar McCoy.

Q. How old are you, Mr. McCoy?

A. 52.

Q. Are you married or single?

A. Married.

Q. Where do you live?

A. 329 East North Street, Muncie.

Q. Are you employed by The Serrick Corporation?

A. Yes, sir.

Q. In what capacity?

A. Tool room foreman.

Q. How long have you been tool room foreman?

A. Well, for The Serrick Corporation, since the 1st of February. I was with the John Lees Company for about, oh, I guess, about twelve years, altogether.

Q. What was your occupation before the time you were tool room foreman?

A. Tool maker.

Q. How long was that; how long were you a tool maker?

A. I was a tool maker for this company since 1920.

Q. Were you a tool maker before that time?

A. Oh yes.

Q. How long?
A. About 14 years before that.
Q. Before that time?
A. Well, since I started to learn the trade.
Q. Yes. Now, as foreman of the tool room for The Serrick Corporation at its Muncie plant, how many employees did you have working under you as of the 10th of August, 1937?
A. 63.

By Trial Examiner Rockwell:

Q. How many?
A. 63, I believe it was.

Mr. White: Will you mark this as Respondent's Exhibit No. 6, for identification, please?

(Thereupon, the document above referred to was marked as Respondent's Exhibit No. 6, for identification.)

The Witness: Pardon me. I would like to change that to 64.

[fol. 306] By Trial Examiner Rockwell:

Q. 64?
A. Yes. There were 63 working and one assistant foreman.

By Mr. White:

Q. How many shifts were operated in the tool room at that time?
A. Three.
Q. What hours did they work?
A. Well, one was from seven to 3:30.
Q. From 7 A. M. until 3:30 P. M.?
A. From 7 A. M. until 3:30 P. M.
Q. Yes?
A. Then the second one was from 3:30 to 12. The third shift was from 10:30 to 7. There was an overlapping in there.
Q. What is the fact as to whether or not you were foreman of all three shifts?
A. I was responsible for all three shifts.

By Mr. White:

Q. Who was at that time the assistant foreman working under your supervision in that department?

A. Walter Dominek.

Q. Now, do you remember how long he was assistant foreman under your supervision prior to that time?

A. Yes, sir.

Q. How long?

A. Since March 20th, 1937.

Q. (Continuing) —been posted at any place in the plant, concerning foremen or assistant foremen of the tool room?

A. No, sir.

Mr. White: The Respondent now offers in evidence its Exhibit No. 7 for identification.

Trial Examiner Rockwell: Any objection?

Mr. Sawyer: No objection.

Mr. White: I might say the purpose of this offer, Your Honor, is made because there was some cross-examination of Mr. Westlund concerning the fact as to whether a notice was posted two or three weeks before the 10th of August concerning the assistant foreman.

Trial Examiner Rockwell: There is no objection to the document, is there?

Mr. Sawyer: No.

Trial Examiner Rockwell: It may be admitted in evidence and marked Respondent's Exhibit No. 7.

(The document heretofore marked, "Respondent's Exhibit No. 7", for identification, was received in evidence.)

By Mr. White:

Q. Now, did anyone working under your supervision in the tool room, at any time during the time that you were [fol. 307] foreman, subsequent to March 20th, 1937, have the authority to hire or fire anybody in the tool room?

A. Yes.

Q. Who was that?

A. Mr. Dominek.

Q. Did any other person have such authority?

A. No, not without my consent, only in this way: That Mr. Dininger might, in case he had to lay anybody off, and I would have him tell them, then I would get their checks fixed up for them.

Q. Did you determine who should be laid off?
A. Yes.
Q. Then you would tell him?
A. Yes, sir.
Q. Then he would convey the word on to that particular individual, would he?
A. That is right.
Q. Now, going back to the months of June, July and August, Mr. McCoy of this year, I wish you would state the conditions as they existed in the tool room concerning persons working under your supervision?
A. Well, during the whole month of July, and I think a little bit before that—I think it started in the last part of June—they started getting their heads together in there, and they done a lot of talking and running around.

Mr. Sawyer: We object to that. Let him tell what was said, if the Examiner please.
I ask that the answer be stricken out about, "Getting their heads together," unless he tells who it was and what they said.

A. I don't know what they said.

Mr. Sawyer: Well, in substance.
Trial Examiner Rockwell: I think you better start over again. I will strike out the answer. Let the witness tell what he saw or heard.
Mr. Sawyer: Yes.

By Mr. White:

Q. You may state what you saw and what occurred in the tool room among your employees during the months of June, July and August, 1937?
A. Well, I saw them leave their work benches and machines, and they would go over and visit with the next one, and they were talking with each other.
I couldn't tell what they were talking about, but I had a pretty good idea. When I would walk over there to hear what they said, then they would shut up like a clam.
Q. Did you ever have any conversations with employees on that subject, Mr. McCoy?
[fol. 308] A. Oh yes, I got after them for talking so much and not getting the proper amount of work out.
Q. Who did you get after?
A. Well, I remember——

Q. About when was it? Was it on various occasions?

A. It was on various occasions. I cannot say just when it was.

Q. Who did you get after?

A. I remember I got after Frank Wittmer one time.

Q. What did you tell him?

A. I told him that he would have to cut out talking so much and get a little more work done. The work he was on, it took several hours more time to get the work done.

At that time he had been talking quite a bit. He said that everybody else in the place was doing it, too.

Q. All right. Now, what else did you ever observe with reference to that?

A. And I had to get after Mose Birod.

Q. What did you say to Mose?

A. I told him to quit talking so much and get some work done. He said, "All right," that he would.

Q. Who else did you get after?

A. I got after Walter Jacobs.

Q. What for?

A. He was doing quite a bit of talking.

Q. What is that?

A. I say, he was doing quite a bit of talking.

Q. What did you tell him?

A. I told him about the same thing, that he would have to settle down and do more work and less talking.

Q. Do you remember anybody else that you reprimanded for talking too much?

A. Yes.

Q. Who?

A. Bob Bunch.

By Trial Examiner Rockwell:

Q. How do you spell the last name?

A. B-u-n-c-h.

By Mr. White:

Q. What did you tell him?

A. I told him that he would have to get that job out pretty quick or I would have to let him go. I can't say how many hours he had been on the job, but he had been on the job a week longer than necessary to get the job out; but I over-looked it that time.

Q. Now, do you remember anybody else that you got after in the tool department?

A. Well, I don't remember anybody in particular, but I suppose I did because there was so much of it going on. They had me worried pretty bad because I wasn't getting the work out like I should.

[fol. 309] Q. How long did that condition exist?

A. About a month or a little over.

Q. Now, did you ever talk to any of the employees at any time who were working under you in your department, trying to get them to join any union or discouraging them from joining any union?

A. I did not.

All right. Then Mr. Shock said, "Conditions out there are bad, and," he said, "we don't like it."

He said, "The reason we have called in this organizer to organize us is to get it under one head, one organization, so that there will only be one faction."

He said, "There are two factions out there now and," he said, "we ain't getting no place," or words to that effect.

I couldn't tell you the exact words he said, but that is the substance of it.

Examination by the Chair.

By Trial Examiner Rockwell:

Q. Is your name on this list, do you know?

A. I don't believe so.

Q. Is the name of Mr. Dominek on that list, do you know?

A. I don't think so.

Q. His name is not on the list?

A. No, I don't think so.

Q. Now, what position was held by Mr. Dininger, for example? Did he have any title?

A. Well, I wouldn't call it a "Title," exactly. He looks after things at night.

Q. On which shift is that?

A. The second.

Q. The second shift?

A. 3:30 to 12.

Q. Would you say that he was in charge of that shift?

A. Well, yes, in a way. I didn't try to line up every man with their job. I just told him—or gave him a list of the work I wanted done, then he distributed it.

Q. If anybody wanted to leave that second shift they would have been obliged to asked his permission?

A. They would have probably told him they were going, yes. They wouldn't walk out without saying anything.

Q. Well, he was the man who assumed responsibility when you were *you* not there, was he?

A. Yes, sir.

Q. Was there a similar man for the third shift?

A. Yes, sir.

Q. What was his name?

A. Boland.

Q. What is it?

A. Joe Boland.

Q. This other man's name was Russel Dininger?

A. Yes, sir.

[fol. 310] Q. And Joe Boland?

A. Yes sir. On this third trick we only worked three or four men.

Q. I see. About how many men worked—on the basis of August 10th, about how many men worked on the second shift?

A. We generally had about ten or twelve.

Q. The first shift was by far the largest?

A. Yes, sir.

Q. Mr. Dominek worked on the first shift, did he not?

A. Yes, sir.

Trial Examiner Rockwell: I think that is all.

Re-direct examination.

By Mr. White:

Q. Did Mr. Dininger or Mr. Boland have the power to hire or discharge anybody?

A. No, sir.

Q. How many hours a day did you work yourself in the plant, Mr. McCoy?

A. Well, I worked plenty.

Q. About how many hours?

A. I never left before five o'clock, and from then on.

Q. Did you ever come back and work at night?

A. Oh, yes, I would go back there to the plant to see how things were going.

Q. Now, on the first and second shifts, what is the fact as to whether or not you were present most of the time?

A. Yes, I was.

Q. And on the third shift, there were only three who worked?

A. Three or four or possibly five altogether. Most of the time there was about four.

Q. Are you familiar with what is known commonly as the "Setup man," in the plant?

A. Yes, sir.

Q. What is the fact as to whether or not Dininger and Boland operated on about the same basis as setup men?

A. I would say so. The only thing is that we don't have that condition in the tool room. If a man is running a machine he sets up his own machine.

Q. But they have about the same authority?

A. Yes, I would say so.

Mr. White. That is all.

Examination by the Chair.

By Trial Examiner Rockwell:

Q. You mean that they had about the same authority that a setup man would have had if there had been a setup man?

A. Yes, sir.

[fols. 311-319] Q. You do not mean to say that you were normally present all during the second shift, do you?

A. Oh, no.

Q. You mean sometimes you returned there in the evening and sometimes you did not?

A. Yes.

Q. All right.

* * * * * * *

[fol. 320] A. F. WESTLUND, a witness called by and on behalf of the respondent, having been previously sworn, was examined and testified as follows:

Direct examination.

By Mr. White:

Q. State your name.

A. A. F. Westlund.

Q. You are the same A. F. Westlund who has heretofore testified as plant manager of the Serrick Corporation?

A. Yes.

Q. Calling your attention to August 10, 1937, at the time when Mr. Clark, representing the U. A. W. A. came into your office, I wish you would state about what time of day that was and who was present at that conference.

A. It was between 11:15 and 11:30 in the morning, and it lasted until shortly after noon. In that conference was Mr. Stillwagon, Mr. Lewis, Mr. Clark, Mr. Clay Collins and myself. A stenographer took down some stenographic notes on it.

There was one point ahead of that I missed, and that is in looking over the contract I noticed that the contract called for sole bargaining rights, and I also questioned our ability to do that, and Mr. Clark asked why, and I said, [fols. 321-342] "Well, we already have two others in here on which we have made agreements." And he asked me who they were, and I said, "We have had an agreement with the polishers for quite a long time, since some time in March, and that we had agreed upon a contract with the tool makers of the American Federation of Labor. And then I went out in the aisle and I found Mr. Clark talking to Mr. Sharp and Mr. Keil, and I questioned his right to discuss these matters on company property with the employes who were supposed to be working, and he immediately admitted that he was in the wrong in so doing. He went out in the lobby and I followed him out in the lobby, and I asked Mr. Sharp and Mr. Rudy Keil if they had checked out their time for their conference and they said they had not. They went back and rang the clock.

* * * * * * *

[fol. 343] JOHN D. LEWIS, a witness called by and on behalf of the Serrick Corporation, having been previously duly sworn, resumed the stand and testified as follows:

Q. You are the personnel director of the respondent corporation, as I understand it?

A. That is right.

Q. Are you familiar with the supervisory officials and the set-up men who are at the present time employed by the [fol. 344] Serrick Corporation at its Muncie, Indiana plant?

A. I am.

* * * * * * *

Q. Now, are you familiar with the duties of the set-up men, Mr. Lewis?

A. I am.

Q. You may state whether or not the set-up men have any power to hire or discharge any other employees.

A. They have not.

Q. Can you state in a general way what the duties of the set-up men are in the various departments?

A. Well, the set-up men are responsible for a certain group of machines that they are assigned to, for getting the orders placed on the machines properly, and seeing that the jobs are set up O. K. for inspection before they are turned over for the operator to operate.

He is responsible also to the foreman for the quality of the work that is turned out in that department.

He is also responsible to the foreman for any drill breakage or die breakage. It is up to him to set the job up [fol. 345] properly so that the operator can not—so that the operation will be made full-proof as much as possible.

* * * * * * *

Q. I mean, you are just simply testifying that that is what the company's records show?

A. That is right.

Q. Is there anybody who is just sort of one degree under a foreman who has the entire job of supervision?

A. Mr. Truaz.

Q. He has the title of assistant foreman?

A. Yes, sir.

Q. Is there anybody else who is in the same position?

A. No, sir.

Q. Is he on a monthly basis?

A. No, he is on an hourly rate basis.

Q. There is no question but what he is in a supervisory position out there in the plant, is there?

A. He has charge of the night shift. He is under Mr. [fol. 346] Shiner, the day foreman, who has jurisdiction over the department day and night.

It is his responsibility to look out for these men that have charge at night, the men that are assistants or set-up men.

By Trial Examiner Rockwell:

Q. Is it a part of the duties of a set-up man to report to the foreman whether or not some person is doing his work as well or badly?

A. Yes, sir.

Q. And to keep the foreman posted on the way the various people do their work——

A. Yes.

Q. (Continuing) —over whom he has responsibility for so doing that work?

A. Yes, he is responsible for the work in his individual line to the foreman. Any time he has a man that is not satisfactory, why, he reports him.

Q. He hasn't the power to fire them, but he reports them to the foreman?

A. Yes, because Mr. Antrim is on one shift and Mr. Humphrey is on another.

If anything like that takes place it is up to Mr. Antrim to report it to Mr. Humphrey, anything such as if a job goes wrong, then it is up to him to report it to the foreman, to report just what took place.

Trial Examiner Rockwell: "Maintenance" takes in janitors and millwrights, does it?

Mr. White: Yes, and some improvements and repairs that are going on in the plant at the present time, which also is included—that is, employees engaged in that particular enterprise, is included.

CECIL B. SHOCK a witness called by and on behalf of the International Association of Machinists, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McDonald:

Q. State your full name.

A. Cecil B. Shock.

By trial examiner Rockwell:

Q. How do you spell the last name?

A. S-h-o-c-k.

By Mr. McDonald:

Q. Where do you live?

A. Muncie, Indiana.

Q. Are you a married man?

A. Yes, sir.

Q. Are you employed by the Serrick Corporation here in Muncie, Indiana, Mr. Shock?

A. I am.

[fol. 347] Q. I believe you are employed there as a toolmaker, are you, Mr. Shock?

A. As a tool and die maker.

Q. As a tool and die maker?

A. Yes, sir.

Q. When were you employed there at the Serrick Corporation?

A. When?

Q. Yes.

A. To my knowledge since February.

Q. Did you work for the John Lees Company before you came to the Serrick Corporation?

A. I did.

Q. How long?

A. Approximately 14 years.

Q. As a tool and die maker what is your duties out there? Can you explain, briefly, what your duties are?

A. My duties are the building or repairing of tools, dies, fixtures, gauges, and anything else that comes up in the shop that the foreman demands to be repaired.

Q. Do you work both on the John Lees and the Acme side of the tool room?

A. I have.

Q. Have you made tools for the Acme side as well as tools for the John Lees side?

A. I have, both.

Q. About when, Cecil, was this organization, the Machinists Union of the American Federation of Labor started?

A. When was it first thought of?

Q. Yes. When was it first started or thought of, do you remember?

A. Well, it was first discussed with me about somewhere around the middle of July.

Q. The middle of July?

A. Yes, sir.

Q. What was the conditions in the tool room at that time relative to organization by other organizations?

A. Well, to my knowledge there had not been any dis-

cussion about the American Federation of Labor up to that time, but there had been some talk of the U. A. W. A.

Q. That is, the United Automobile Workers of America?

A. Yes.

Q. Had there been some solicitation in the shop at that time by the United Automobile Workers of America?

A. I couldn't say as to that.

Q. You did not see any?

A. No, I didn't; that is, nothing more than what talk went on around the shop.

Q. I see. Now, there was quite a bit of talk in the tool room at that time about the U. A. W. A., wasn't there?

A. Well, there wasn't as much then as there was later on.

[fol. 348] Q. There has been testimony given here that you set out to get an organizer to come in, at the time of the beginning of the A. F. of L. in the shop?

A. Yes, sir.

Q. Do you know anything about that?

A. Yes, I do.

Q. Will you tell us about that?

A. Well, I was approached by three or four of the older fellows in the plant and asked——

Q. Just a minute. Who were they?

A. Who were they?

Q. Yes. What was their names?

A. Mr. Baker, Mr. Birod and Mr. Fouts.

Q. Was that all?

A. Those are three that I remember distinctly.

Q. Yes?

A. They asked me if I would consider doing that.

Mr. Sawyer: When was that?

Trial Examiner Rockwell: Ask the witness when it was.

By Mr. McDonald:

Q. When was it?

A. I don't know what you mean.

Q. When was it? About what date was it?

A. Well——

Q. Do you remember about what date it was?

A. Well, it was around in the middle of July sometime. I don't remember the exact date it was.

Q. Was it about the 20th, would you say, or the 17th of July? Tell us as best you can.

A. Well, it was around somewhere about between the 15th to the 20th, I would say.

Q. All right.

A. They asked if a majority—they asked me if they held a straw vote, and that showed a majority——

Trial Examiner Rockwell: Talk up a little bit louder so we can all hear you.

The Witness: To clear up the situation that existed in the shop at that time they asked me if a majority would be in favor of the American Federation of Labor would I go along with them; and I told them I would.

By Mr. McDonald:

Q. Yes?

A. There was a straw vote held there and that seemed to be the way things stood at that time.

Q. The majority of the tool makers at that time were in favor of the American Federation of Labor?

A. Yes, according to this straw vote that was my opinion, and that is what I was convinced of, through this straw vote.

Q. What was done at that time? Did you send out and get an organizer to come in?

A. I had a conversation with these same fellows about it [fol. 349] as to what to do.

Q. Yes?

A. And we agreed to have Mr. Birod delegated to try to locate an organizer, which he did.

Q. What did he do?

A. He left the building during working hours, and we arranged—that is, Mr. Baker, Mr. Fouts and myself—to recompense him for the time he was off to do this.

Q. Did he report back to you that he had gotten hold of an organizer, Mr. Shock?

A. He did.

Q. Tell us about that.

A. There was an organizer that we had been notified was in town, and he had made an appointment with him. He was with him several hours that morning.

Then he made arrangements for a meeting with this organizer that night.

Q. About when did you have your first meeting with this man you have spoken about?

A. Well, do you mean the first meeting that we had with this here organizer?

Q. Yes, the first meeting that you had with the organizer is what I am referring to.

A. The first meeting we had with the organizer, if I remember correctly, was the 28th of July.

Q. Where was the meeting held at?

A. It was held in the Board of Works in this building, on the 2nd floor of this building.

Q. The 2nd floor of this building?

A. Yes.

Q. In the Board of Works?

A. Yes, sir.

Q. All right. Now, about how many was there that evening, Mr. Shock, if you can remember?

A. How many people was down there?

Q. Yes, about, if you know.

A. Well, I would say there was at least 35 people was present at that meeting.

By trial examiner Rockwell:

Q. How many?

A. At least 35.

By Mr. McDonald:

Q. Was your application made out at this meeting and signed by you, to the best of your recollection?

A. Yes.

Q. Did you sign your application at this meeting that you are speaking of, Mr. Shock?

A. I did.

Q. Who was the organizer that you speak of that came in to do this organizing work?

A. Mr. McDonald of the American Federation of Labor. [fols. 350-356] Q. Had you ever saw Mr. McDonald before you came to the meeting with him—before you came to the meeting that night?

A. I hadn't.

Q. Did Mr. McDonald explain to you that it was necessary to have a majority of the employees of the tool room before we could contact the company and take up any agreement, or have any negotiations with them?

A. He explained all of that.

Q. He went into detail and explained the Wagner Act, and all about bargaining rights, did he?

A. Yes, sir.

Q. Did he explain the amount that you would have to have in order to have a majority, and so on and so forth?

A. Yes.

Q. He did?

A. He did.

Q. That night in that office was an application for a charter made out for this local?

A. It was.

Q. Now, do you remember at that time who the temporary officers was, Mr. Shock?

A. Well, yes.

Q. You remember that?

A. I remember the officers that was appointed that night, if that is what you mean.

Q. The temporary officers that was appointed?

A. Yes, temporary officers was appointed.

Q. Who were those?

A. There was myself.

Q. What were you?

A. I was temporary chairman.

Q. Yes. Who else?

A. Mr. Birod was committeeman for the first trick on the day shift; and Mr. Wheeler was the committeeman for the second trick.

Q. Was there a temporary recording secretary appointed at that meeting that you speak of?

A. Yes, there was.

Q. Who was that?

A. Mr. Bolander.

Q. Mr. Joe Bolander?

A. Joe Bolander and Sterl Huber.

Q. What was his office?

A. He was secretary-treasurer.

* * * * * * *

[fol. 357] Q. I wish you would tell us what happened out there about August 13th about these boys that didn't care to go along with the organization.

A. Well, I wasn't getting close to any of these conversations. I was working out there, but I saw them congregat-

ing, and there seemed to be some confusion as to just what they were going to do about it.

They had several meetings there in the tool room where they would get together and discuss the thing, trying to decide whether they were going with us or if they was going to quit; and from the information I got around through the shop, why, they decided not to make out any applications, but to leave their jobs.

Q. In other words, they were going to stand pat? Is that what you want to say?

A. Yes, sir.

Q. About how many of them was there—or about how many of them, if you can testify to that, took their tools and walked out?

A. At what time?

Q. On August 13th.

A. There was two different sets of ones, that is, the night trick and the day trick. Do you want both combined?

Q. If you can, give them separately; if you can not, give us the total.

A. I believe there was 23 or 24.

Q. That is, all of them combined, the men on the two tricks?

A. Yes.

[fols. 358-359] Q. Now, was there anything said to these boys when they walked out that you know of?

A. Was there anything said to them?

Q. Yes. Was there anything said to the employees that went out when they went out?

A. When they went out?

Q. Yes. Was anything said to them at the time they went out that you know of?

A. Well——

Q. Can you testify to anything that was said to them? That is what I mean.

A. Nothing was said to me directly, no.

Q. Directly? Not directly.

A. No.

Q. Is that about all you know about the trouble that happened there on August 13th?

A. That's about all, I guess.

Q. Had there been prior to August 13th—had Mr. Birod—the testimony is that Mr. Birod run around the shop about three quarters of the time notifying these boys about the

closed shop. Can you testify as to whether that is the fact or not?

A. Notifying these boys?

Q. Notifying these boys, yes, that you had agreed on a closed shop agreement?

A. Well, I know of one instance when he happened to notify them.

Q. When was that?

A. It was after the contract was signed and agreed upon.

Q. What happened then?

A. I authorized him to go around the shop and to notify them myself.

Q. You authorized him, you say?

A. Yes, sir.

• • • • • • •

[fol. 360] Q. Now, going back to the tool room, Mr. Shock: Supposing something happened today and you would not [fols. 361-362] go to work. Would that affect the production department? In other words, would they have to shut down on account of the employees, the tool makers not being there?

A. Not immediately, no.

Q. Now, referring to the buffing department: If the buffers, for some unknown reason, wouldn't go to work today or tomorrow, would that affect production?

A. It would affect some departments immediately.

Q. Which ones?

A. The wrapping and shipping departments would be affected immediately. It would be up to the company's discretion as to whether they wanted to pile up stuff in the buffing department and leave it lay there or not; but they could operate things up to that department.

Q. When the production department is shut down the tool departments keep on operating, don't they?

A. As long as there is tools to be made, yes. It don't affect the tool room if they shut down.

• • • • • • •

[fol. 363] Cross-examination.

By Mr. White:

Q. Mr. Shock, how long does it take to become an experienced tool and die maker?

A. Well, you are supposed to serve an apprenticeship of four years. That don't necessarily mean that you are qualified as a tool and die maker. I would say that a man with ten years experience would be considered, or should be considered at least fair.

[fol. 364] Q. It takes years to learn the trade, is that right?

A. I have always found it so.

Q. Are you familiar with the operations in the rest of the plant in a general way in the production department of the Acme-Lees Division?

A. Well, I have worked on lots of tools used in production.

Q. What is the fact as to whether or not a tool and die maker can operate any machine in the plant?

A. That is right.

Q. Can the production workers operate any of the tools, or tool machines in the tool room?

A. No, I would not think so.

* * * * * * *

[fol. 365] Q. Do you remember about when that straw vote was taken in the tool room, Mr. Shock?

A. It must have been, according to the way it comes to me, around the *the* 25th—around the 24th or the 25th of July.

Q. Around the 24th or 25th of July?

A. Yes.

Q. Do you know who participated in the straw vote that was taken there at that time?

A. Who did the voting?

Q. Yes, who did the voting?

A. Who took care of the voting?

Q. Yes.

A. Why, yes. Mr. Birod went around with a paper and checked them for one side or the other.

By Trial Examiner Rockwell:

Q. Mr. Who did you say?

A. Mr. Birod.

Q. Mr. Birod?

A. Yes.

Q. He has testified here?

A. Yes, sir.

Trial Examiner Rockwell: Proceed.

By Mr. White:

Q. Now, what did you say was the result of that straw vote?

A. At the time I saw the paper, and the way it checked up, it was approximately 80 per cent that were for the American Federation of Labor.

[fols. 366-368] By Trial Examiner Rockwell:

Q. Approximately 80 per cent?

A. Yes.

By Mr. White:

Q. Do you remember how many were on that list, Mr. Shock?

A. I don't remember exactly, but it was—it included the majority—a majority of the workers in the tool room at that time.

* * * * * * *

[fol. 369] ARTHUR R. BAKER a witness called by and on behalf of the International Association of Machinists, being first duly sworn, was examined and testified as follows:

[fol. 370] Direct examination.

By Mr. McDonald:

Q. State your full name, please.

Trial Examiner Rockwell: Pardon me. The witness has not been sworn yet. Be sworn.

(Whereupon, the oath was duly administered to the witness.)

By Mr. McDonald:

Q. State your name, please.

A. Arthur R. Baker.

Q. Where do you live, Mr. Baker?

A. 1711 University, Muncie, Indiana.

Q. Are you married?

A. Yes.

Q. Are you in the employ of the respondent in this case, the Serrick Corporation?

A. I am.

Q. How long have you been employed there?
A. Since the 1st of February.
Q. Were you employed at the John Lees Company before they moved to Muncie, Indiana?
A. Yes, sir.
Q. How long did you work for the John Lees Company?
A. I was there around 3½ years.
Q. You were employed there as what?
A. Tool and die maker.

Mr. Brady: Yes.
Mr. White: Yes.
Trial Examiner Rockwell: All right. It may be admitted as Intervener's Exhibit No. 2 in evidence.

(Thereupon, the document above referred to, heretofore marked Intervener's Exhibit No. 2," for identification, was received in evidence.)

By Mr. McDonald:

Q. Mr. Baker, I want you to explain to the Trial Examiner the set-up in that tool room.
A. All right.
Q. We have heard a lot about the John Lees and the Acme Divisions in the tool room. Go ahead and explain that.
A. Well, except for three minor differences this is an accurate plan view of the tool room as of the first part of August and up to the 13th day of August.
This (indicating) is the fence.

By Trial Examiner Rockwell:

Q. You are indicating now all around the boundary of this tool room, are you?
A. All around the boundaries of the tool room, yes.
Q. There is a fence there?
A. Yes, from that point there (indicating) around here (indicating).
[fol. 371] Q. That is, you are indicating around the top of the sketch?
A. Around the top of the sketch. There is a wire fence there four and one half feet above the floor. That is a four foot fence six inches above the floor.

From that point (indicating) around here (indicating) is a wooden partition.

Mr. Sawyer: When the witness says "this" and "that" I think that he had better indicate what he means.

Trial Examiner Rockwell: I will take care of that.

The Witness: It is about four feet high with chicken wire netting from there on up to the roof.

By Trial Examiner Rockwell:

Q. How about from here on (indicating)?

A. This (indicating) is the fence. The fence begins right here (indicating).

Q. Let's see. Let us take a pencil and mark the letter "A" where your finger is. Take this red pencil and make a red mark, the letter A on this exhibit around across the top, on the left side, and so forth, way around to "B". Is that the fence that you have described?

A. Yes.

Q. Then from "B" up to "A", along the right hand side of the sketch, that is the wooden partition you have told us about?

A. Yes. This (indicating) is the partition that is not shown. Here (indicating) is the tool supply room, in here. It takes two bays in here. (Indicating.)

This bay here (indicating) is the die crib. That supplies the Acme Division with finished dies. There is a stock of finished dies kept in the crib (indicating).

Q. You are now pointing to a blank space on the sketch in the lower right hand corner?

A. Yes. It is not a part of the tool room.

By Mr. McDonald:

Q. Now, start at the left side, down at the bottom, and explain all of those machines that are setting in there. What are they?

A. Well, in the first place, there is lockers in here. (Indicating.)

Trial Examiner Rockwell: Pointing from the point marked with a "B" up to this point which is marked with a "C".

You get the idea why we are doing that, so whoever reads the record will understand, without your being there to point it out, just where these things are.

[fol. 372] A. Yes. These benches are used by the repair crew, those taking care of the machine repairs for both the Acme Division and the John Lees Division. There is no difference there. They take care of all the repair work, the tool room machine repairing.

There is a row of grinders, going from there to here. (Indicating.)

Q. Those are labeled "surface grinders."

A. Yes.

By Mr. McDonald:

Q. Are they external grinders?

A. No. These two grinders here (indicating) are used during the day time by the Acme grinders.

At night they are able to do all of their grinding. On the day shift they complete practically all of the grinding. Sometimes they have men on the grinders after 3:30, but not all of the time.

These grinders (indicating) are normally used by the John Lees Division. They also use these grinders (indicating) when they aren't busy on the Acme work.

By Trial Examiner Rockwell:

Q. The first two grinders are numbered A-142 and A-141?

A. Yes, sir. There is a grinder here (indicating) numbered A-641 which was not in the tool room prior to August 13th. That has been added since that time. At that time that grinder was not in there.

Trial Examiner Rockwell: Now, Mr. McDonald, do you want this witness to explain everything on there?

Mr. McDonald: Yes, I want him to give you a clear picture of the tool room.

Trial Examiner Rockwell: If you feel that it is absolutely necessary to go through the whole thing, why, we will do so.

The only issue on that score that has been raised is the question of whether or not all of the Acme machines are on one side of the tool room and all of the Lees machines are on the other. I believe there was some controversy about that.

Mr. McDonald: I understood that there was a distinction made in some way, that there was aisles between the Acme and the John Lees Divisions. I don't know whether that is correct or not, but that is the impression I got.

[fol. 373] Trial Examiner Rockwell: I doubt if it is necessary to particularize on every single machine that is in that room.

You might make the explanation more general by saying all of the rest of the machines are used for some other purpose, whatever it is. I will leave it in your hands, that is, unless there is some objection to that that would be raised by some one else here.

By Mr. McDonald:

Q. Go ahead with your explanation.

A. These benches here (indicating) are all occupied by die makers that work normally on John Lees work.

Trial Examiner Rockwell: Indicating the benches on the left hand side.

The Witness: The left side.

Trial Examiner Rockwell: Or on the west side, and the row of benches along the north side.

The Witness: The west side and the row of benches on the north side.

By Trial Examiner Rockwell:

Q. They are usually used by the people who make the dies and tools?

A. For the John Lees Division.

Q. For the John Lees Division?

A. Yes. Of course, some dies from the Acme Division are sent over here to be made by the John Lees men.

By the way, that (indicating) is the foreman's desk right there.

Q. Mark that with the letter "D". Mark that with a red letter D where the foreman's desk is.

A. Yes.

Q. That is Mr. McCoy's desk?

A. Yes. Now, in a general way, the majority of these machines right through the center here (indicating) are used interchangeably by the John Lees and the Acme employees.

This turret lathe A-133 is used entirely on Acme work. These two engine lathes are normally used on Acme work.

By Mr. McDonald:

Q. What are their numbers?

A. A-132 and A-131. If they have more work than they

can do normally on those two lathes they come over there (indicating) and use any of the lathes that are empty to complete their work.

Now, the Acme Company has this shaper No. A-123 tied up on Acme work almost continuously on the first shift, but on the second and third shifts they don't. If they have more shaper work on the first shift than they can get finished, [fol. 374] why, these repair men come over there (indicating) and use any of the shapers that they find empty and use them at any time they want to.

This shaper (indicating) has been added since August 14th.

Q. What is the number of that?

A. No. 472. That takes care of those two bays here (indicating).

This (indicating) is the heat treating department.

Q. Where is that?

A. This northeast bay is the heat treating department. Everything in there pertains to the heat treatment of the dies made by both divisions. They are all handled by one man with a helper.

These two milling machines, Nos. A-121 and A-127, and this gear shaper here (indicating) No. 134, are all used normally on Acme work.

This drill press A-136 is used normally on Acme work entirely.

This drill press here (indicating) A-120 is used by both sides alternatively.

These three milling machines,—in fact, these four, Nos. 242, 185, 162 and 186, are all used interchangeably between the two departments as the need arises.

This drill press No. 168, and these also (indicating) Nos. 103 and 167, are used interchangeably by the repair men in the John Lees Division, and also by the maintenance crew from out in the shop, some of the men who might have to bolt a piece of steel. They can come in here and do that. Hardly a day passes that there are not some of them in there using the drill presses.

This bench lathe No. 139 and bench lathe 138 are both used interchangeably as the need arises. If this one (indicating) is full they come over here (indicating) and if that one is full then they go over there (indicating).

I think that just about takes care of all of the machinery.

By Trial Examiner Rockwell:

Q. What work would they be doing on the bench lathes?

A. They are small lathes, about that long, (indicating) and they use them for very small, fine work.

Q. Is that Acme work?

A. It is both Acme and John Lees. If one is busy they use the other one.

Q. Both divisions have about the same amount of work, do they?

A. Yes, sir.

[fol. 375] By Mr. McDonald:

Q. Now, these blocks here, about how big are they?

A. Those blocks are 25 feet square. These lines are not on the floor of the tool room, except for the break in the concrete. That is the way they make the concrete floors, with seams in them.

These (indicating) are steel posts that support the roof. Otherwise, there is nothing to obstruct the view or vision.

By Trial Examiner Rockwell:

Q. These round holes here (indicating) are steel posts?

A. Yes, those round holes are steel posts. There is no other markings on the floor at all. In fact, a great part of the floor is wood over concrete. Even these lines (indicating) don't show.

Q. Where do you work?

A. My bench is the sixth one from here (indicating) right here.

Q. You are doing John Lees work?

A. I have done nothing but John Lees work since I have been up here in Muncie.

Trial Examiner Rockwell: Go ahead.

By Mr. McDonald:

Q. These blocks here (indicating) you say are 25 feet square?

A. They are 25 feet square.

Q. In this tool room, from this point to here (indicating) it would be 125 feet?

A. 125 feet the longest length, from here to here (indicating), and 75 feet this way. 75 feet that way. (Indicating.)

Q. Take this room in here now (indicating). You testified that this room (indicating) is the heat treating department?

A. That bay is entirely taken up with the heat treating department.

By Trial Examiner Rockwell:

Q. That is the northeast bay?

A. The northeast bay.

Q. You might write the word "north" right here, and then put a W for "west" over here, so it will not be confusing.

A. All right.

Trial Examiner Rockwell: I think that is about all. I wanted to show that because there was some confusion here about what division there was in the tool room.

Do you mind if I ask him another question or so?

Mr. McDonald: No.

By Trial Examiner Rockwell:

Q. Is there any single aisle through the tool room, Mr. Witness?

A. There is an aisle, yes, that runs lengthwise through here. (Indicating.)

[fols. 376-382] Q. From east to west?

A. From east to west, down through the center. It is not exactly an aisle, but there is a clear open space that is kept clear so you can walk down there.

Q. From east to west?

A. Yes. It is also kept clear around the benches, around here (indicating).

Trial Examiner Rockwell: That is all.

Mr. McDonald: One more thing.

By Mr. McDonald:

Q. This here part right here (indicating) is just for the repair department, this block of 25 feet here?

A. These (indicating) are the benches that the repair men use. This space in this bay (indicating) that is empty. That is where the machinery is dragged in by the tractor and is deposited for repairs, for the repair division.

Mr. McDonald: May we mark that "repair department," Mr. Trial Examiner?

Trial Examiner Rockwell: Yes, sure.

The Witness: These (indicating) are the benches, the repair men's benches. This open space here (indicating) is used to drag in machines that are to be repaired. They are set in there until they are repaired.

By Trial Examiner Rockwell:

Q. Right in there (indicating) there is a repair room or a repair bay?

A. Yes.

Q. And that is used for both the Acme Division and the John Lees repairs?

A. Yes. The repair department uses any of that machinery in there that they have to to make special parts that are required for the repairing of machinery.

* * * * * * *

[fols. 383-384] JOSEPH BOLANDER, a witness called by and on behalf of the International Association of Machinists, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McDonald:

Q. Please state your name.
A. Joseph Bolander.
Q. Where do you live, Mr. Bolander?
A. I live at 109 South Council, here in town.
Q. In Muncie, Indiana?
A. Muncie, Indiana.
Q. Have you always lived in Muncie, Indiana?
A. No, sir.
Q. Are you married?
A. Yes, sir.
Q. Are you an employee of the Serrick Corporation?
A. I am.
Q. How long have you been out there?
A. Since the first of February of this year.

Q. Did you come here with the John Lees Company when they moved down here to Muncie, Indiana?
A. I did.
Q. How long have you been working for John Lees?
A. It will be 4 years the 28th day of May since I commenced working for the John Lees Company.
Q. What shift do you work on?
A. The third shift.
Q. On the third shift?
A. Yes, sir.
Q. Are you a tool maker?
A. Yes, sir.

* * * * * * *

[fol. 385] WALTER FOUTS, a witness called by and on behalf of the International Association of Machinists, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McDonald:

Q. State your full name, please.
A. Walter Fouts.
Q. Where do you live?
A. 723 West Main Street.
Q. Muncie, Indiana?
A. Muncie, Indiana.
Q. Are you a married man?
A. Yes.
Q. Are you employed by the Serrick Corporation?
A. Yes, sir.
[fols. 386-391] Q. How long have you been employed there?
A. At the Serrick Corporation?
Q. Yes.
A. Since the first of February.
Q. Did you come down here from Indianapolis, from the John Lees Company in Indianapolis?
A. Yes, sir.
Q. How long did you work for the John Lees Division?
A. About 12 years.

Q. What do you work at out at the Serrick Corporation, Mr. Fouts?

A. Tool making.

Q. What is that?

A. I am a tool maker.

Q. Now, can you explain to us the type of tools that you build, briefly?

A. Well, I make all of the rolls for the rolling department down there; and I take care of them and keep them running.

Q. Is your work any different from Mr. Baker's job, in a general way?

A. Yes, considerably.

Q. You have to figure it out to the ten thousandth of an inch in your work, do you?

A. Yes, sir.

* * * * * * *

[fol. 392] MARION SWIFT, a witness called by and on behalf of the International Association of Machinists, being first duly sworn, was examined and testified as follows:

* * * * * * *

[fol. 393] Q. Where did you work before you went to work out here at the Serrick Corporation?

A. At the Chevrolet plant.

Q. What are your duties out at the Serrick Corporation?

A. Making dies.

Q. You are a tool and die maker, are you?

A. A tool and die maker.

* * * * * * *

[fol. 394] By Mr. McDonald:

Q. Oh, you testified that you got a 15-cent raise?

A. Yes, sir.

Q. Otherwise, you were getting 85 cents an hour?

A. Yes, sir.

Q. And you were raised to $1.00 an hour?

A. Yes, sir.

By Trial Examiner Rockwell:

Q. What is your answer to that?

A. Yes, I did.

Q. You got raised up to $1.00 an hour?
A. Yes, sir.

* * * * * * *

[fol. 395] Moses M. Birod, a witness called by and on behalf of the International Association of Machinists, being first duly sworn, was examined and testified as follows:

[fol. 396] Direct examination.

By Mr. McDonald:

Q. Please state your name.
A. Moses M. Birod.
Q. Where do you live?
A. 9 miles north of Shelbyville, in Shelby County.
Q. Are you married?
A. Yes, sir.
Q. Are you employed by the Serrick Corporation?
A. Yes, sir.
Q. How long have you been employed there?
A. Well, I came down here with them about the 6th day of February and stayed one week, then I left, and then I came back in July.
Q. What part of July?
A. Well, I can't just give you the exact date on that because I never paid much attention to it.
Q. About?
A. It was somewhere along about the first or maybe the last part of June. I wouldn't say for sure.
Q. Have you been employed there ever since?
A. No; all but three weeks that I took off for a vacation.
Q. Are you employed, Mr. Birod, as a tool maker for the Serrick Corporation?
A. Yes, sir.
Q. Yes.
A. While I think about it, I had to quit in order to get that vacation, and then they hired me back again.
Q. Now, there is testimony in the record, Mr. Birod, that you took up a straw vote around there sometime in July.
A. Yes.
Q. Around the plant sometime in the month of July.
A. Yes.

Q. The testimony is that it was all of the way from the 15th to the 20th of July, to find out whether the boys wanted the A. F. of L. or the C. I. O. in the shop. Do you know about when that was?

A. I should judge it was around the 20th.

I talked to Mr. Sharpe, Mr. Bunch, and Mr. Levi; and they seemed to be the principal men that was doing the talking around there at that time for the organization.

I didn't at that time belong to anything. I was on a withdrawal from the A. F. of L., since 1917.

I agreed to join the C. I. O. if they would have a majority; and I signed up a card for the C. I. O., but I didn't give them no money.

[fol. 397] Then I went around the shop and got some of the other boys that was riding the fence, boys that wasn't anything in particular, and we talked it over. They seemed to think that we could carry a majority for the A. F. of L. in the plant.

I said, "I will go with the majority." I said, "I will take a straw vote to see where we are at."

Then I took a straw vote, and we had about 80 per cent of the tool room that was for the A. F. of L.

Then the boys decided that they would get in touch with an organizer from the A. F. of L. They appointed me to contact an organizer from the A. F. of L., and I did that.

Q. Who did you contact?

A. Mr. C. F. McDonald.

Q. Now, going back to this time that you took this straw vote, was there any understanding between you and the other boys in the shop that if the majority of the boys wanted the A. F. of L. that you would all go along with the American Federation of Labor?

A. That was practically the whole substance of the straw vote. When ever I would talk with the boys they would say that if the majority was with the A. F. of L. that they would go along with it.

Q. And if there was a majority for the C. I. O. that they would go along with the C. I. O.?

A. Yes. There was only two men that said they would not go along with the C. I. O. if they had a majority. They was both card men from the A. F. of L.

Q. Now, you say that you contacted Mr. C. F. McDonald?

A. Yes.

Q. How did you find out where to contact him or how did you come to know about Mr. McDonald?

A. Well, I done some inquiring around. I heard that you was organizing Ball Brothers, and I heard that you was putting up at the Roberts Hotel, so I called up the Roberts Hotel and I asked the operator there when you would be coming in.

The telephone operator at the hotel took my telephone number. I told her to take a message for you to call me at the shop; and you did that.

Q. When was that, and what was said at that time?

A. Well, that was about 8 o'clock in the morning, or such a matter; and you asked me when I could see you.

I said, "I can come and see you at any time, at your convenience." And then you said, "Come up about 10 o'clock. Come up to the hotel."

[fol. 398] Then I said, "All right, I will be up there," and so I came up to the hotel and I met you.

That was the first time I had ever seen you in my life.

We talked it all over, and you asked me if we had a majority. I told you according to the straw vote that we had a big majority.

At that time—I don't know who it was—but there was someone that belonged to the C. I. O. that said they had a majority. They was only kidding. They told me about it afterwards.

Anyway, I assured you at that time that I had a big majority. Then you said, "Well, we will call a meeting tonight." That was on the 28th, I believe, of July.

We called a meeting to be held in the City Hall, I think on the 2nd floor, in the Commissioner's Room, I believe it was. At that time we met, and all of the boys was up there, that is, all but the ones that was C. I. O. They didn't show up.

Well, that made me sort of scratch my head and think a little bit because of the fact they had backed up on the proposition; but we had a majority.

Q. How many were there?

A. We had 34 members there that night, and they all signed up, paid their dues and initiation fees and we applied for a charter.

At that time we also elected temporary officers for the organization.

Q. Now, who were the temporary officers that was elected, do you know?

A. Mr. Shock was elected president, Mr. Bolander was elected recording secretary, Mr. Huber was elected secretary-treasurer, Mr. Wheeler was elected committeeman, and Mr. Morris was elected committee man, and also myself.

Q. Now, going back to the shop; did you say that you did sign one of these C. I. O. cards?

A. I signed up a C. I. O. card at that time, yes.

Q. When was that?

A. That was along in—I wouldn't be able to give you exactly the date—but it was quite a little while before we contacted you.

Q. Who signed you up?

A. Well, Earl Sharpe talked to me about signing up. I told him I would sign up, but I wouldn't pay no money into it until I found out how things was.

[fols. 399-402] He said that he didn't have no applications at that time, but for me to go and see Bob Bunch; so I went to see Bob and Bob said, "I haven't got any either," he said, "but Steve has got one. Go and get one from him."

Q. Who is this Steve you are talking about?

A. He worked right back of Bob's bench; so I walked back to see Steve. I knew him for several years, working in different places. He gave me an application and I filled it out and gave it back to him.

Q. That was during working hours, was it?

A. Yes, sir.

* * * * * * *

[fol. 403] Q. Now, Mr. Birod, between the 6th of August and the 13th of August did you tell all of these boys about what your organization had agreed to in the tool room?

A. I told the boys the next morning, which would be the 7th, that we had voted to accept the contract the way Mr. Murphy had worded it in that telegram, and that it would be a closed shop, and that he would sign it just as quick as he came back.

Q. All right. Now, when did Mr. Murphy get back, do you know when that was?

A. Well, I couldn't tell you just exactly what date he got back because he might not have notified us when he got back; but he notified us on the 11th.

Q. Then the contract was signed?

A. Then we held a conference and the contract was signed.

Q. Was it posted on the bulletin board?

A. It was brought out and posted on the bulletin board immediately after it was signed. One copy was posted on the bulletin board in the tool room and one copy was posted at the time clock in the front of the plant.

Q. Did the one that was posted in the front of the plant by the time clock stay up there?

A. Well, I know that it was up there when I went home that night, but then it was gone the next morning when I came down to the shop.

Q. Yes.

A. Pardon me, Mr. McDonald, but I think I made an error there.

Q. What was that?

A. On when the contract was posted.

Q. When was it posted?

A. It was posted on the 11th. I don't know whether I had that right or not, because we was talking about the dates of the 6th and the 11th there.

On the 7th is when I told the boys in the shop that the contract had been accepted, and on the 11th they posted it after Mr. Murphy had signed it.

Q. You are speaking now of the time between the 6th and the 11th. Between that time had you done any organizing work in the shop for the American Federation of Labor?

A. Oh, I had talked. There was quite a bit of talking going on on both sides; and I had to ask questions of the boys about what the boys thought of it.

I told them there was going to be a meeting, or something like that.

I gave one fellow an application one noon and told him to sign it if he would come along with us. I really talked [fols. 404-406] to him quite a bit. I talked to him whenever I would get a chance to speak to him. Whenever we come in contact with one another I asked him what he had decided on.

He carried the contract around with him for a day or so—that is, the application, and then he gave it back to me. He told me that he had decided to ride the horse that he was on.

Q. He did not go along with you?

A. No, he didn't go along.

• • • • • • •

[fol. 407] By Mr. Brady:

Q. Mr. Birod, when did you first go to work for the John Lees Corporation of Indianapolis?

A. Well, the first time I worked for the John Lees Corporation, under the John Lees name, was in 1928.

Q. Had you had any connection with the same firm, or the firm that preceded the John Lees Corporation?

A. To be honest and frank with you, I couldn't even tell you the executives there back in 1928, except the toolroom foreman was Mr. Wise, that is, the tool supervisor.

[fol. 408] Q. Had you worked with him before?

A. I had worked with Mr. McCoy, yes.

Q. When?

A. I worked for him in 1916, as a diemaker and tool repair man.

Q. That is the same Mr. McCoy who had been and is now the foreman of the toolroom here at The Serrick Corporation?

A. Yes, sir.

Q. Was that your first relationship with him?

A. Yes.

Q. The first time that you worked under him was back in 1916, was it, Mr. Birod?

A. Yes, 1916.

* * * * * * *

Q. Now, when was it that you came here to work for The Serrick Corporation?

A. I came here along about the 6th, somewhere in that neighborhood.

Q. About what date?

A. Oh, it was about the 1st, 2nd or 3rd of February.

Q. 1937?

A. Of this year.

Q. Did you go to work for them at that time?

A. I worked one week.

Q. You only worked for one week?

A. No, I guess it was two weeks.

Q. For two weeks?

A. Yes.

[fol. 409] Q. Then what did you do?

A. Then I went back to Indianapolis.

Q. Then did you later on return?

A. I returned here along around about the 1st of July.

Q. About the 1st of July?

A. I wouldn't say whether it was June or July, but it is on their records out there, so you can find out.

Q. Then about the 1st of July of this year you came back again, did you?

A. Yes, sir.

Q. And you went to work for them?

A. Yes.

Q. Soon after you came back did you join any union or organization?

A. Well, we contacted Mr. McDonald on the 28th.

Q. Prior to that time, I mean.

A. I signed a card for the C. I. O., but I didn't pay them no money at that time.

Q. When was it that you signed that card?

A. Well now, I couldn't tell you the exact date that I did that, but it was in the month of July, though.

Q. Before you signed that card had you talked to any of the boys who belonged, or whom you knew belonged to the U. A. W. A.?

A. I couldn't swear that they belonged to the U. A. W. A., only they were taking cards.

Q. How did you know that they took cards?

A. One of them gave me a card.

Q. Who was that?

A. Harold Sharpe. Him and I was pretty good friends.

Q. You say that you were pretty good friends?

A. Yes, sir. I had been out to his house several times, and he spoke to me about joining the C. I. O.

Q. That was while you were out at his house?

A. It was before that.

Q. What is that?

A. I signed that card before the time I went out to his house.

Q. You and he were good friends?

A. Yes, fairly good friends.

Q. Well now, what did you say to him when he spoke to you about joining the C. I. O.?

A. I don't remember the conversation that we had at the time. I didn't burden my mind with it.

Q. Do you know where it was, or when it was?

A. Well, when we talked about anything like that, why, it was at the shop.

[fol. 410] Q. After you had talked with Harold, and he with you about joining the C. I. O., what did you do?

A. I asked him where he joined.

Q. Yes. What did he tell you?

A. He said, "I haven't joined, outside of that card."

Q. What else was said?

A. Well, I just couldn't say what else was said. I know we was talking about the card, and he asked me if I wanted one.

I said, "Well, it don't hurt to sign it, I guess, does it?" He said, "No."

Q. Then what was said?

A. He said, "See Bob Bunch."

Q. All right. Where was Bob Bunch?

A. At his bench.

Q. In the factory?

A. Yes.

Q. Were you at Harold's bench when this conversation occurred, do you remember?

A. I believe it was at his bench, and that I was instructing him on a die that he was making.

Q. You were at Harold's bench when you had this conversation about the U. A. W. A.?

A. I was instructing him on the right way to do the job.

Q. And he told you to see Bob Bunch?

A. Yes, sir.

Q. Then what did you do?

A. I went to see Bob.

Q. Where did you see Bob?

A. It was in the toilet or in the washroom first.

Q. You went in there to see him?

A. No, we just happened to be in there, and I spoke to him about it.

Q. That was after Harold had told you to see Bob?

A. Yes.

Q. What did you say to Bob Bunch?

A. I asked Bob if he had any of them cards.

Q. What did he say?

A. He said, "No."

Q. Did you say what kind of cards?

A. I didn't have to. He knew what I was talking about.

Q. What did Bob say?

A. Then Bob says, "See Steve. He has some cards."
Q. Who was Steve?
A. That was Floyd Stevenson.
Q. Then did you see Floyd?
A. Well, I don't remember whether I went to Floyd or if Floyd came to me. I wouldn't say for sure; but it seems to me that it was over at Floyd's bench, because Bob's and his bench joined.
[fol. 411] Q. That is, Bob's and Steve's benches joined?
A. Yes, sir.
Q. As you remember it, as you passed Stevenson's desk or bench, what happened?
A. Well, I can't say whether I mentioned it to Steve or Steve mentioned it to me.
Q. Anyhow, what happened?
A. He gave me a card and I went over and filled it out.
Q. Where did you go to fill it out?
A. I wouldn't say whether I went over to my bench or not. I believe I went to Sharpe's bench to fill it out, and I asked him the particulars about it.
Q. And you signed up, did you?
A. Yes.
Q. Then what did you do with it?
A. I gave it back to Stevenson.
Q. Then you went back over to Floyd Stevenson's bench and you handed it to him, did you?
A. I passed there quite often and I could leave it there pretty near any time when I was going back and forth.
Q. Well, did you take it over to Stevenson's desk and hand it to him?
A. Well, I don't remember whether I made a special trip for that or not.
Q. So, anyway, you handed it back to Stevenson?
A. Yes.
Q. That was a card for local No. 459 of the U. A. W. A.?
A. I couldn't tell you what the number of the local was.
Q. Anyway, it was a local of the U. A. W. A.?
A. Yes, sir.
Q. Now, when was that?
A. I couldn't tell you the date.
Q. Now, you came back——
A. Haven't you got a record of the date?
Q. No, Mr. White has the date, I guess. You came back here about the 1st of July, didn't you?

A. Something in that neighborhood.

Q. It was on the 28th when the machinists union was formed, and it was on the 20th of July when you took that straw vote?

A. Yes, sir.

Q. Then it would have been sometime between the 1st of July and the 20th, wouldn't it?

A. I wouldn't swear to that.

Q. Well, you think it was after you took the straw vote, do you, Mr. Birod?

A. No, it was before.

Q. Oh, it was before?

A. It was before.

[fol. 412] Q. But you don't know how soon before it was, do you?

A. No, I don't.

Q. Well now, when you came back here in the first part of July did you find a great deal of talk going on in the toolroom about the U. A. W. A. and the A. F. of L.?

A. Well, on the day I came back, if it was the 1st,—I don't just remember when—but there wasn't much friction when I came in the shop.

Q. Yet within two or three weeks you had joined the U. A. W. A., by signing your card at least?

A. If there was any friction when I came back I didn't notice it.

Q. When you went to work out there you say that things were still peaceful?

A. So far as I know.

Q. That is, as far as you could observe?

A. I was a new man on the job and, of course, I stayed at my bench.

Q. When did you first observe this dissension when you came back there to work?

A. Oh, I should judge it was around—when it was real hot, why, that was around the 15th.

Q. So it was a couple of weeks after you got in here that you first observed a lot of dissension in the toolroom?

A. I wouldn't say about that.

Q. Well, that is about the time you signed that U. A. W. A. card?

A. I wouldn't give you the date on that because I don't remember.

Q. Well, then, on the 20th day of July you say you took a straw vote?

A. Yes, in that neighborhood.

Q. Well, about the 20th of July, was it?

A. Yes, something close around there. It may have been a little later and it may have been around—oh, it might have been around the 24th.

Q. Then it was about three weeks after you came back to work there, was it?

A. Something in that neighborhood. I wouldn't say for sure. I could look up my pay checks and tell you, I suppose.

Q. Then when you took the straw vote, how soon after that was it that you contacted Mr. C. F. McDonald of the Machinists Union?

A. I contacted him on the 28th.

Q. On the 28th?

A. Yes, sir.

Q. So, then, about a week after you took the straw vote you contacted Mr. C. F. McDonald?

A. It might be about that time, or maybe a little longer.

[fol. 413] Q. Now, Mr. Birod, this straw vote you say showed an 80 per cent majority?

A. Just about.

Q. What?

A. Just about.

Q. Yet you let a week elapse before you tried to contact Mr. C. F. McDonald?

A. I tried to contact him before that, but he was not here in town.

Q. How did you learn that he was in town?

A. There was some talk about him organizing Ball Brothers, so I called up the Delaware Hotel to see if he was there. He wasn't, so then I called up the Roberts Hotel and I asked if a Mr. McDonald was putting up there.

It seems that they got the message confused, that there was another McDonald that worked over there—well——

Q. The question is where and how did you learn his name?

A. I just asked over there if there was a labor organizer putting up over there by the name of McDonald. First, I asked if there was a labor organizer that was putting up over there at the hotel. She told me that there was a Mr. McDonald there.

I said, "All right, when will he be in?" She told me that she didn't know.

Q. Who was that that told you that?

A. The operator; the telephone operator.

Q. You mean the telephone operator over at the hotel?

A. Yes, sir.

Q. Over at the Roberts Hotel?

A. Yes. Then I called again.

Q. Well, you contacted him actually, did you, on July 28th?

A. He called me on July 28th. I had left a message there at the hotel for him to call me.

Q. Well, you got into telephone communication with him, did you, on the 28th of July?

A. Yes, sir.

Q. That was in the morning about eight o'clock?

A. Something like that. I know that I met him at ten o'clock.

Q. You met him in that room?

A. Yes.

Q. Then that evening you had a meeting over in the Board of Works office, did you?

A. Yes, sir.

Q. All right. Now, Mr. Birod, was anybody with you at the time when you contacted Mr. McDonald?

A. I was by myself.

Q. You were alone?

A. I was by myself.

[fols. 414-420] Q. Now, that evening you had the boys up here at the Board of Works office, did you?

A. Yes, sir.

Q. How did you get them up there?

A. Why, I told them over at the shop. I said to them that anybody that wanted to come up, why, to just come on up there.

Q. I see. You went around the toolroom and told them all about the meeting, did you?

A. No, not that exactly. Anything you tell to a couple of them, why, it will go around fast enough.

Q. Well, what two of the boys did you tell?

A. I can't recall. I just told two or three of the toolmakers that happened to be around there.

Q. All right. Can you tell me the name of just one of the boys that you told that to?

A. I believe I told Mr. Shock.
Q. That is Cecil Shock?
A. Yes.
Q. Well, he was a good fellow about spreading tales if you wanted them spread around, was he?
A. He is about like the rest of us.
Q. Then who else did you tell?
A. I believe I told Mr. Fouts.
Q. That is, Walter Fouts?
A. Yes.
Q. Who else did you tell?
A. I might have told Mr. Baker.
Q. Mr. Arthur Baker?
A. I wouldn't say for sure about that.
Q. That was Arthur Baker?
A. Yes.
Q. Now, can you recall anybody else?
A. No, I can't recall anybody else.
Q. Well, you told these three fellows that you were going to have an A. F. of L. meeting in the City Hall building?
A. Yes, sir.
Q. Did you say what time it would be?
A. I told them it would be about seven o'clock.
Q. Were you all up here at seven o'clock?
A. I believe I was here at six-thirty.
Q. Did you meet Mr. McDonald?
A. And I met Mr. McDonald.
Q. Then you were here when all the rest of the boys came up to the meeting, were you?
A. Yes, sir.

* * * * * * *

[fol. 421] Q. Now, to sum it up and get it in chronological order, on or about the 19th day of July you signed a card in the U. A. W. A.
A. In other words, you told me the date. I don't remember the date.
[fol. 422] Q. Would you say that date was about right?
A. I don't say for sure. If your word is all right, I would say yes.
Q. That was within two or three weeks from the time you had entered the employ of the company, wasn't it?
A. I can't just recall. I never looked that date up.

Q. Then on or about the 20th you conducted a straw vote in the place, didn't you?

A. I wouldn't say that it was the 20th, or I wouldn't say that it was the 18th. It might have been the 22nd; but it was in that neighborhood.

Q. Now, you testified on direct examination, Mr. Birod, that it was on or about the 20th, didn't you?

A. About.

Q. All right.

A. Something in that neighborhood.

Q. And then on the next day, or the day after, after several unsuccessful attempts, you did contact Mr. McDonald?

A. Yes, sir.

Q. And on the 28th day of July you met with Mr. McDonald and arranged for a meeting that night?

A. At 10 o'clock in the morning, yes.

Q. And then you notified the boys to be there on the night of the 28th?

A. Yes, sir.

Q. And then on August 3rd you were in a meeting with the company?

A. Yes, sir.

Q. And on August 6th the telegram was brought to you?

A. Yes, sir.

Q. And sometime along about that time you took a list of the names of your members in to the company?

A. I took that list in after Mr. Murphy had left for New York.

Q. Yes.

A. I wouldn't say just exactly what date it was, but it was in between the time it was signed up.

Q. And on August 11th you were in there when the contract was signed, weren't you?

A. Yes, sir.

Q. Then you notified some of the boys that the 13th was the last day?

A. Yes, sir.

Q. Then you conducted a meeting before Mr. Charles Fox?

A. That meeting was conducted right after the contract was signed. I wouldn't say whether it was the first or the second day.

Q. After you had done all of these things then you quit, didn't you?

A. I took a vacation.
Q. What is that?
A. I took a vacation.
Q. Well, you quit?
A. I quit to take a vacation; but I am working.
[fol. 423] Q. Yes. And you left town?
A. Yes, sir.
Q. When did you come back?
A. Last Monday evening I come into town and went to work on Tuesday.
Q. Tuesday morning of this week?
A. Yes, sir.

By Trial Examiner Rockwell:

Q. When did you leave, Mr. Birod?
A. Three weeks ago last Saturday.
Q. When was that?
A. It was three weeks ago last Saturday.
Q. What date would that be?
A. I don't just recall.
Q. Well, anyway, it was three weeks ago last Saturday, you say?
A. Yes.

By Mr. Sawyer:

Q. Three weeks ago last Saturday?
A. Yes.
Q. Were you here when the hearings started on October 18th?
A. I haven't been in town, up here to no hearings.
Q. Were you here on October 18th when the subpoena was issued?
A. No.
Q. Then you quit before three weeks ago last Saturday, didn't you?
A. Three weeks ago last Saturday it was.

Trial Examiner Rockwell: Here is a calendar.

(Passing calendar to the witness.)

The Witness: Oh, that's right. Let me look at this calendar.

Mr. Sawyer: Yes, sure.

The Witness: Let's see, that would be one week, two weeks,—well, I left on the 23rd.

By Mr. Sawyer:

Q. Of October?

A. Of October, if I remember right.

Q. You were in town on the 18th of October, is that right?

A. I don't just remember. It runs in my mind that I left then, and it was just three weeks. I might be mistaken. I am not going to take an oath about that, but my time card at the shop will show the date I quit.

Mr. Sawyer: Pardon me for interrupting, your Honor, but this is very material.

Trial Examiner Rockwell: Go ahead.

By Mr. Sawyer:

Q. Were you in town, Mr. Birod, on the 18th of October?

A. I wouldn't swear to it.

Q. What is your best judgment on it?

A. Now, let's see if I have got that slip with me. If I [fol. 424] have I can tell you what date I was out of town. I wouldn't say that I have it here, but I will look for it in my pockets.

It seems to me like my rent was due on Monday the 18th, and that I left the Saturday before.

Q. On the 16th then, would you say?

A. My rent was due on the 18th day of the month here, and I gave up the house, a furnished house, and I left the Saturday before that.

Q. On the 16th of October?

A. Now, I wouldn't say for sure, but I believe so.

Q. Just look at the calendar again.

A. I believe so; yes, that is right.

Q. Yes, the 16th of October?

A. Yes, that is correct.

Q. Then you were not out there when any subpoena was brought out by the Board to have you as a witness for them?

A. No, I was gone before they called the hearing here at all.

By Trial Examiner Rockwell:

Q. Where did you go on your vacation, if I may ask?

A. I was in Quincy, Illinois, Champaign, Illinois and

Plymouth, Illinois, in Bartholomew County.

Q. You were not working in that period?

A. No. I had a job to go to but I didn't take it.

Q. Then it was entirely a pleasure trip?

A. Yes, sir.

Q. What job did you intend to go to?

A. The Chevrolet Commercial Body Company, in Indianapolis.

Q. You were one of those who came over here from Indianapolis, were you?

A. I came over here and worked two weeks, I believe it was; then when they got busy here I came back.

Q. Did anybody from Muncie, or anybody connected with the Serrick Corporation, get in touch with you and ask you to come back?

A. No. You mean when I came back here to work this time?

Q. Yes, this time.

A. Mr. Baker came down and told me that they had a bending fixture that they would like for me to build; and he would like to have me come back and build it; and I said, "All right, I will come back."

That was on Sunday, and so I came down Sunday evening, then I came in on Monday.

There was nobody signed up in our organization.

[fols. 425-429] Q. Now, as to that straw vote that you took; you were present and actually took the vote?

A. I went around and talked to the boys individually.

Q. Did you have a petition or cards, anything like that for them to sign?

A. No, sir. I had a piece of paper, and everyone that told me about it why, I would make a mark on the piece of paper.

Q. Did you have a piece of paper with everybody's name on it?

A. There was only about 63 men there. I had taken a straw vote before of the night men coming in on the second trick.

When I took this straw vote the evening before I got the men coming on. They overlapped with us, from 3:30 to 7 o'clock. I got those men the next morning, and I got the men on the third trick, the night men also.

Q. Then you went around the tool room and talked to everybody and marked down the result of that on a piece of paper?

A. Yes, as I could get around to them without the boss catching me loafing.

Q. You did not write their names down on this piece of paper?

A. No, I just made marks, tally marks, and then I added up the marks that was down on the paper.

* * * * * * *

[fol. 430] FRED E. IRVINE, a witness called by and on behalf of the International Association of Machinists, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McDonald:

Q. State your name.

A. Fred E. Irvine.

Trial Examiner Rockwell: Proceed, Mr. McDonald.

By Mr. McDonald:

Q. Now, Mr. Irvine, do you belong at this time to any labor organization?

A. Yes, sir.

Q. What organization do you belong to?

A. The International Association of Machinists, Lodge 1200.

Q. That is, Production Lodge No. 1200?

A. Yes.

Q. Are you an officer of that organization?

A. Yes, sir.

Q. What is your office?

A. Financial secretary.

Q. You are financial secretary?

A. Yes, that is right.

Q. Since you have been financial secretary have you had any withdrawals or notices of withdrawals from your lodge?

A. No, sir.

Q. Mr. Irvine, I will ask you at this time who are eligible to that organization in the Serrick Corporation?

A. Why, any production employee of the Serrick Corporation, excluding buffers, polishers, tool and die makers.

Q. How about supervisory employees——
A. And supervisory employees.
Q. (Continuing:) —and clerical help?
A. Yes, and clerical help.
Q. Are you at this time putting on any campaign on behalf of your organization at the Serrick Corporation?
A. I would hardly say it was a campaign, but we are always taking in members.
Q. You have been for some time?
A. Yes, for some time.
Q. Since August 10th?
A. Yes, that's right.
Q. Now, these people in the wrapping and shipping department, are they eligible for membership in your organization also?
A. Yes, sir.
Q. Also maintenance men?
A. Yes, they are.
[fols. 431-440] Q. In fact, everybody working on production at the Serrick Corporation except excluding tool and die makers, buffers and polishers, are eligible for membership in your organization?
A. That's right.

Trial Examiner Rockwell: By the expression "production" that would be virtually everybody at the plant. That would mean everybody working at the plant at the present time, would it not?
Mr. McDonald. Yes.
Trial Examiner Rockwell: Except the classes which this witness has already testified are excluded?
Mr. McDonald. Yes.
Trial Examiner Rockwell: That is what you meant by your questions, I take it?
Mr. McDonald: Yes.
Trial Examiner Rockwell: Does that conform to you- understanding of it, Mr. Irvine?
The Witness: Yes, sir.
Mr. McDonald: I would like to refer, Mr. Trial Examiner, to Intervener's Exhibit No. 1.
Trial Examiner Rockwell: To what?
Mr. McDonald: I would like to refer to Intervener's Exhibit No. 1. I would like to refer to page 65, Section 7, lines 18 to 22, inclusive.

Shall I read them into the record?

Trial Examiner Rockwell: Yes, if you wish to do so you may.

Mr. McDonald: All right.

"In the machinists' craft a production workers is a person employed in the mass production metal industry engaged in repetitive machine work or assembly work, or bench work, requiring less training, experience and skill than that necessary to qualify one as a machinist."

Trial Examiner Rockwell: In referring to that statement, Mr. McDonald, you are reading from an exhibit that is in evidence in this case?

Mr. McDonald: Yes.

Trial Examiner Rockwell: What are you reading from?

Mr. McDonald: Intervener's Exhibit 1, which is the by-laws of the International Union.

That is all.

[fol. 441] COLLOQUY

Trial Examiner Rockwell: We have had something in the record to the effect that all of the persons in that union, excluding the toolroom, buffers and polishers, are eligible for membership.

Now, if there should be an election ordered by the Board, which would include the toolroom as well as the production employees, the name on the ballot for the C. I. O. would be the same; and on the ballot for the American Federation of Labor it would be "International Association of Machinists, Tool and Diemakers Lodge No. 35."

Mr. McDonald: That is right.

Trial Examiner Rockwell: And International Association of Machinists, Production Lodge No. 1200.

Mr. McDonald: Yes.

Trial Examiner Rockwell: Probably designated as the A. F. of L. in each case.

Mr. McDonald: Yes.

Trial Examiner Rockwell: Do you have any question about that, Mr. White?

Mr. White: That would make three organizations.

In other words, if the toolroom were included in the election then I would think that the ballots would merely state

"International Machinists Association, affiliated with the American Federation of Labor."

Trial Examiner Rockwell: That is true. That is the fact. If the A. F. of L., Lodge 1200, did not get a majority that [fol. 442] in itself would not show that the A. F. of L. did not get a majority.

I also might have added another alternative, namely, if the Board should decide that the election should be by divisions in the plant, and the A. F. of L., Machinists' Union, Lodge 1200 should be on each ballot; and if it should hold that the election should be held by divisions of the plant, with the toolroom also divided, why, in that case the U. A. W. A. would be on each ballot, and the A. F. of L., Machinists' Union, that both of them in some way should be on the ballot.

A. As to Mr. White's point, which is obviously sound, I think it is sufficient to have that problem noted in the record at this time.

I assume it is true, isn't it, Mr. McDonald, that if the Board should decide there is only one union here, namely, the toolroom and remaining production employees, that is, there should be only one bargaining agency for the whole unit, Production Lodge No. 1200, and the Tool and Diemakers' Lodge No. 35, and they will have some kind of joint representation worked out to deal with the employer.

Of course, that has happened in other cases where there is more than the A. F. of L. Union, and they have used these joint metal trades councils.

Mr. McDonald: Yes.

Trial Examiner Rockwell: So I think it is enough to have that point noted in the record in case the Board should hold that the tool and diemakers should be included.

Trial Examiner Rockwell: Now, Mr. Brady, do you contend, that is, do you make the affirmative contention that everybody who is listed in the stipulation, Board's Exhibit No. 34, as having signed an U. A. W. A. card, has presented himself for membership and followed out completely the by-laws from which Mr. White has read, or do you simply stand on your contention that that is entirely irrelevant?

Mr. Brady: I am taking the position that it is entirely irrelevant, and that the only thing that has been done is, as Mr. Desmond has already testified, that the card has been submitted by Mr. Desmond to the lodge or to the local,

and that the local has voted upon these people as to whether [fol.443] they shall be accepted into the organization.

We are not taking the position that each and every person has gone on through and paid dues up to date, and all of that sort of thing.

In fact, on the contrary they have refused to so testify; and by "refusal" I mean that has been the understanding between both unions that that could be done.

In other words, I take the position that that is not a matter in controversy here at all. Had we undertaken to prove that then I believe that the respondent would have a perfect right to undertake to disprove it.

By Mr. White:

Q. Mr. Desmond, will you state whether or not any person has been initiated into membership of the International Union of United Automobile Workers of America, Local 459, without the payment of the initiation fee and the dues provided for in the by-laws of the organization?

Mr. Sawyer: To which I object, if the Examiner please, for the reasons already stated in my previous objection.

Trial Examiner Rockwell: Now, what is the purpose of that particular question, Mr. White?

Mr. White: If the answer is "No" it lays the foundation, then, for asking him the question "how many have paid the initiation fee and dues?", which again presents the question of how many members there actually were on that date.

I do not have any interest in the financial condition of this organization. The only purpose of this line of questioning is to determine whether or not on the dates it is alleged that the respondent refused to bargain the petitioning union had a majority—or had a majority of the membership consisting of the employees of The Serrick Corporation, and on the question of whether or not this Board should certify the petitioning union as a representative, the representative of all of the employees of The Serrick Corporation without an election.

Mr. Sawyer: We do not want to take the position of questioning that statement or admitting it.

The fact is that the information does go into the record and it does go out openly here, and whether or not he wants it, or he says that he wants that information with reference

[fol. 444] to the finances of the company, why, it does become their information.

Now, we stand ready at this time, as we always have, and I speak for both unions in this case, that if your Honor wants to examine any of these records, why, you may do so. We are not trying to hide anything from your Honor.

Trial Examiner Rockwell: All right.

It is true, is it not, Mr. McDonald, that you agree with the position of the Board and of the petitioning union on this line of questioning?

Mr. McDonald: Yes, your Honor, as far as finances are concerned.

Trial Examiner Rockwell: At least, as far as the unions are concerned.

By Mr. White:

Q. Does the union, of which you are secretary, issue membership cards to its members?

Mr. Brady: What was that question?

Mr. Sawyer: He said "does the union, of which you are secretary, issue membership cards to its members?"

Mr. Brady: Oh.

Trial Examiner Rockwell: Answer the question.

A. Yes, they do.

By Mr. White:

Q. Will you tell me, on August 10, 1937, how many membership cards of the union, of which you are secretary, had been issued?

Trial Examiner Rockwell: Is there any objection to that question, counsel?

Mr. Brady: Let me hear the question. I think not, but I would like to hear the question.

(Question read.)

Mr Brady: Now, wait a second. May I ask him a question first, Mr. White?

Mr. White: Yes.

By Mr. Brady:

Q. Can you tell that without having to refer to your dues records?

A. I think so.

Mr. Brady: All right, go ahead.

A. Membership cards were given to all people that made applications, and they were voted into membership, and they were available for them.

By Mr. White:

Q. How many of them had been issued to the members when they were available for them?

[fols. 445-471] A. I don't know as I can say offhand. Let's see: It is hard to guess upon that. You are asking me as of August 10th?

Q. Yes; issued and delivered.

A. No, I couldn't say; but they were available for them.

Q. Do you have any knowledge at the present time as to how many were not delivered?

A. No, I don't.

Q. Were those membership cards delivered, regardless of the payment of dues, Mr. Desmond?

A. They were.

Q. Or the initiation fees?

A. They were.

Q. It did not make any difference whether a man was initiated or had paid an initiation fee or not?

A. It did not.

Q. What?

A. It did not.

Q. The cards were delivered?

A. They were available.

Q. Well, would they be delivered without the payment of those dues, Mr. Desmond?

A. I don't understand your insistence on the word "delivered."

Q. Were these cards that you mentioned delivered to those persons without the payment of the initiation fees or dues?

A. They would have been given to them.

Q. Whether a man paid his dues or not?

A. Yes.

Q. Was that done in any case?

A. I think it was.

* * * * * * *

[fol. 472] STATE OF INDIANA,
County of Delaware, ss:

In the Delaware Circuit Court,

In Vacation, 1937

No. 2037

THE SERRICK CORPORATION

vs.

LODGE OR LOCAL NO. 459, INTERNATIONAL UNION UNITED AUTOMOBILE WORKERS OF AMERICA, ET AL.

Come now the parties in person and by counsel, and the parties now submit to and file with the court the following agreement:

(Copy of agreement attached)

The court having inspected said agreement and being duly advised in the premises now finds that the parties hereto have entered into the foregoing agreement and that the same should be entered of record in this cause.

The court being further advised in the premises now finds that Paragraph Numbered 1 in said agreement, fixing the date upon which the employees of the plaintiff company should be considered as employees of said company for the purposes of the agreement, towit: August 10, 1937, was and is by agreement of all the parties intended to apply to all workers and employees of the company except any and all employees of the tool and die making department and polishing and buffing department operated by said plaintiff company.

[fol. 473] The court further finds that said agreement so entered into and filed in this cause should be in all things ratified and approved by the court which is accordingly done this 4th day of September, 1937.

Leonidas A. Guthrie, Judge of the Delaware Circuit Court.

STATE OF INDIANA,
County of Delaware, ss:

In the Delaware Circuit Court,

THE SERRICK CORPORATION

vs.

LODGE OR LOCAL NO. 459, INTERNATIONAL UNION UNITED AUTOMOBILE WORKERS OF AMERICA, ET AL.

Come now the parties in open court and by consent of all parties enter into the following agreement:

1. All employees of the plaintiff company as of the 10" day of August, 1937, will be returned to work as rapidly as it is possible to afford work to all such employees.

2. It is agreed that no discrimination as between employees on the part of the company, its servants and agents, will be permitted by reason of membership in or non-membership in any labor organization; that if conditions are such that all such former employees can be employed they will be so employed. If it is found that all such employees cannot be employed immediately, the work will be rotated as between employees so that each and every person so employed may have an opportunity to work.

3. It is agreed that there will be no discrimination as between employees on account of labor union affiliations or otherwise, and that no intimidation shall be permitted by any person whomsoever of any employee looking to his becoming a member of or resigning from any labor organization.

4. It is agreed that the plant of the plaintiff company shall be permitted to operate without interruption on the part of any person or persons, and the strike now in progress shall be suspended pending an election to be held at such time and place as the Labor Relations Board may determine.

[fol. 474] 5. The sound truck heretofore located near the plant of the plaintiff company shall not be used in any manner at or near the premises of the plaintiff company at any time except for the purpose of announcing proposed meetings of the U. A. W. A. pending the outcome of the hearing and election by the Labor Relations Board.

6. It is further agreed that this proceeding will be continued until such time as meets the convenience of the court to resume any hearings if necessary. It is the intention of all parties and it is the spirit of this agreement that these matters may be amicably adjusted between the parties without molestation or hindrance by each other and to the end that the plant of the plaintiff company may resume operations and the employees thereof afforded employment.

7. It is agreed between the parties that the plaintiff company and the representatives of the U. A. W. A. will meet at some place hereafter to be designated in the city of Muncie, Indiana, for the purpose of negotiating a contract between the plaintiff company and the members of the U. A. W. A., such meeting to be held on Wednesday, September 8, 1937, or at an earlier date that meets the convenience of all parties.

Dated at Muncie, Indiana, this 3d day of September, 1937.

Acme Machine Products Div John Lees Division, S. D. Murphy, V. Pres.; Andrew Chandler, Pres. Local 459, U. A. W. A.; Earl F. DeLong, Organizer U. A. W. A.

AGREEMENT FOR CONSENT ELECTION

It is hereby agreed between the John Lees Division of the Serrick Corporation, Muncie, Indiana, hereinafter called the company, and the United Autobobile Workers of America Local #459 affiliated with the C. I. O. and International Association of Machinists affiliated with the A. F. of L., hereinafter called the Unions, that:

1. An election by secret ballot shall be held to determine whether the eligible employees, as specified below, desire [fol. 475] to be represented by the United Automobile Workers of America Local #459 affiliated with the C. I. O. or the International Association of Machinists, affiliated with the A. F. of L., as the exclusive representative for the purposes of collective bargaining with the company in respect to rates of pay, wages, hours of employment and other conditions of employment.

3. Said election shall be conducted under the supervision of Robert H. Cowdrill, Regional Director for the Eleventh Region of the National Labor Relations Board, hereinafter

referred to as the Regional Director, and shall be pursuant to the National Labor Relations Act, and to rules, regulations and decisions of said Board. The date of election will be designated by the Regional Director.

3. All production employees of the company who were on the payroll of July 9th 1937 shall be eligible to vote in this election with the exception of employees in a supervisory capacity, clerical and salaried employees, wherever located. All employees covered by the existing agreements signed by the Company and the Metal Polishers, Buffers, Platers and Helpers Union #53 and the Tool and Die Makers Lodge #35 of the International Association of Machinists, and any others that may be designated on the official notice of Election. Any dispute concerning the eligibility of a particular employee and challenged ballots shall be determined by the Regional Director, or his agent, whose decision shall be final and binding on all parties.

4. The company and the unions shall cooperate fully with the Regional Director, or his agent, in the conduct of said election. The company shall furnish the payroll lists and other information required by the Regional Director in the conduct of said election.

5. The company and the Unions agree to recognize the labor organization receiving a majority of the ballots cast in said election, as the exclusive representative of the production employees as herein described, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

6. It is also agreed by all parties that the result of the election will in no way affect the agreements now in force between the Company and the Tool and Die Makers Union [fol. 476] #35 and the Metal Polishers, Buffers, Platers and Helpers Union #53.

United Automobile Workers of America Local #459 Affiliated With C. I. *L.*, Gilbert R. Clark, International Association of Machinists Affiliated With A. F. of L., John Lees Division, The Serrick Corporation, S. D. Murphy.

Dated this — day of —, 1937.

Endorsed: National Labor Relations Board. Case XI-C-170 et al. (Board) Exhibit No. 22. In the matter of The Serrick Corp., et al. Date 11/2/37. Witness Clark. Ethel E. Fisher, Official Reporter, by Zellner.

AGREEMENT FOR CONSENT ELECTION

It is hereby agreed between the parties known as the Acme Lees Division of the Serrick Corporation of Muncie Ind., hereinafter called the Company, the United Automobile Workers of America, Local No. 459, affiliated with the C. I. O., and the International Association of Machinists, affiliated with the A. F. of L., hereinafter called the Unions, that:

1. An election by secret ballot shall be held to determine whether the eligible employees, as specified below, desire to be represented by the United Automobile Workers of America, Local No. 459, affiliated with the C. I. O., or the International Association of Machinists, Affiliated with the A. F. of L., as the exclusive representative for the purpose of collective bargaining with the Company in respects to rates of pay, wages, hours of employment, and other conditions of employment.

2. Said election shall be conducted under the supervision of Robert H. Cowdrill, Regional Director for the Eleventh Region of the National Labor Relations Board, hereinafter referred to as the Regional Director, and shall be pursuant to the National Labor Relations Act, and to rules, regulations and decisions of said Board. The election shall be conducted at such time as the Regional Director may designate.

[fols. 477-482] 3. All production employees of the Company who were on the payroll of July 9th 1937 shall be eligible to vote in said election, with the exception of clerical and salaried employees, wherever located, supervisory employees, all employees covered by the existing agreements signed by the Company and the Metal Polishers, Buffers, Platers and Helpers Union Local No. 53, affiliated with the A. F. of L. and the Tool and Die Makers Lodge, Local No. 35, of the International Association of Machinists, and any other employees which the regional Director may designate in the Official Notice of election. Any dispute concerning the eligiblity of a particular employee and challenged bal-

lots, shall be determined by the Regional Director or his agent, whose decision shall be final and binding on all parties.

Endorsed: National Labor Relations Board Case No. XI-C-170 et al. (Board) Exhibit No. 23 In the Matter of The Serrick Corp., et al Date 11/2/37 Witness Clark Ethel E. Fisher, Official Reporter, by Zellner.

4. The Company and the Unions shall cooperate fully with the Regional Director, or his agent, in the conduct of said Election. The Company shall furnish the payroll lists and other information required by the Regional Director in the conduct of said election.

5. The Company and the Unions agree to recognize the labor organization receiving a majority of the ballots cast in said election, as the exclusive representative of the production employees herein described, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

6. It is agreed between all the parties that the result of the election will have no effect upon the contract now in force in the Tool Room between the International Association of Machinists and the Company, and upon the contract between the Metal Polishers, Buffers, Platers and Helpers International Union and the Company.

Acme Lees Division of Serrick Corp. Gilbert R. Clark, United Automobile Workers of America, Local No. 459, Affiliated with the C. I. O. Clint F. McDonald, International Association of Machinists, Affiliated with the A. F. of L.

Signed this — day of August, 1937.

* * * * * * *

[fol. 483] BEFORE THE NATIONAL LABOR RELATIONS BOARD, ELEVENTH REGION

No. XI-C-170

XI-R-65

STIPULATION OF FACTS—CONSOLIDATED CASES

In the Matter of the SERRICK CORPORATION and UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL NO. 459

Comes now The Serrick Corporation, respondent, by White & Haymond, its attorneys, The National Labor Relations Board by Colonel C. Sawyer, regional attorney for said Board, The International Union United Automobile Workers of America, Local No. 459, by Paul Brady, its attorney, and C. F. McDonald, representing the International Association of Machinists, affiliated with the American Federation of Labor, and stipulate the following facts, to wit:

That the following list of names includes all the employees of The Serrick Corporation at its Muncie Plant, with the exception of those employed in the buffing and polishing departments and with the further exception of foreman, office employees and other supervisory employees which were on the pay roll, which pay roll included the date of July 9, 1937; that said list of names, however, excludes any employees which were discharged or quit before July 9, 1937 or which started to work after July 9, 1937, but includes employees who may have been temporarily laid off on or before July 9, 1937.

That under the heading "John-Lees Division" appears the employees on the pay roll of the Company as of the above date in the John-Lees Division of the Muncie Plant; that under the heading "Acme Division" appears the employees on the pay roll of the Company as of the above [fol. 484] date in the Acme Division of the Muncie Plant; that under the heading of "Tool Room" appears the employees as of said date on the pay roll of said Muncie Plant employed in the Tool Room:

Employees Acme-Lees Division of the Serrick Corporation Working in Tool Room July 9, 1937

Marston O. Grubbs	Otis Wheeler
Newton Garrett	Chester G. Kirby
Charles J. Fensel	Ronald Hilton

Alfous Dix
Herman Davis
Carey J. Collins
James Condon
Lon S. Cole
Erskine Allison
Lawrence H. Clear
Walter Baldridge
Fred Bunner
Maurice Heiss
Eugene Harris
Earl Hirons
Joseph L. Zimmer
Len L. Jones
Jacob Lear
Ira Lawrence
Ralph Leonard
Robert Manlove
George W. Morrical
Richard W. Peaa
Rex Richards
George Stillwagon
Eugene Stapf
Dwight Stiffler
Fred H. Spoo
Fred R. White

Joe Bolander
Arnold Earl Madara
Walter Jacobs
Rudolph Keil
Marion V. Swift
Anthus Oldham
Walter Fouts
Harold Sharp
Bert Kuchler
Francis Witmer
C. B. Shock
Shelby Tolley
Robert Bunch
Forrest Breedlove
Allie Locke
Robert Westlund
Wm. A. Meier
Arthur R. Baker
Levi C. Benn
Russell Dininber
Grant Steel
Floyd Stevenson
Leslie Conner
Wilbur Hiatt
Harry Mayo
George A. Lowe
Sterl Huber
Russell Morris
Raymond Staab
Norval Thompson
William Merrell
Joe Lusher
[fol. 485] George E. Devine
Geo. Schwarz
John Pickering
Moses M. Byroad

That the following list of names includes all the employees of The Serrick Corporation at its Muncie Plant, with the exception of those employed in the buffing and polishing departments and with the further exception of foremen, office employees and other supervisory employees which were on the pay roll, which pay roll included the date of August 10, 1937; that said list of names, how-

ever, excludes any employees which were discharged or quit before August 10, 1937 or which started to work after August 10, 1937, but includes employees who may have been temporarily laid off on or before August 10, 1937.

That under the heading "John-Lees Division" appears the employees on the pay roll of the Company as of the above date in the John-Lees Division of the Muncie Plant; that under the heading "Acme Division" appears the employees on the pay roll of the Muncie Plant as of the above date in the Acme Division of the Muncie Plant; that under the Heading of "Tool Room" appears the employees as of said date on the pay roll of said Muncie Plant employed in the Tool Room:

Employees Acme-Lees Division of the Serrick Corporation Working in Tool Room Aug. 10, 1937

Earl Hirons
Fred Spoo
Marston O. Grubbs
Lon S. Cole
Eugene Harris
Rex Richards
Herman Davis
Maurice Heiss
Erskine Allison
Dwight Stiffler
George W. Morrical
Walter Baldridge
James Condon
Robert E. Manlove
[fol. 486] George Stillwagon
Charles Fensel
Ralph Leonard
Joseph L. Zimmer
Ira Lawrence
Jacob Lear
Len L. Jones
Carey. J. Collins
Richard Peaa
Lawrence H. Clear
Newton Garrett
Fred R. White
Moses M. Byroad
John I. Pickering
George Schwarz
George E. Devine
Joseph Lusher
William Merrell
Walter Welsh
Raymond Staab
Russell Morris
Sterl Huber
Harry Mayo
Wilbur Hiatt
Leslie Conner
Floyd Stevenson
Grant Steel
Russell Dininger
Levi C. Benn
Arthur R. Baker
Eugene Stapf
Wm. A. Meier
Robert W. Westlund
Allie Locke
Forrest Breedlove
Robert Bunch
Shelby Tolley
C. B. Shock
Francis Witmer
Bert Kuchler

Harold Sharp
Walter Fouts
Marion V. Swift
Rudolph Keil
Walter Jacobs
Joe Bolander
Ronald Hilton
Chester G. Kirby
Otis Wheeler

That the following list of names includes all employees of respondent at its Muncie Plant except polishers and buffers, supervisory employees, and clerical employees from June 1, 1937 to November 9, 1937, together with the date on which any of such employees signed an application card for membership in the International Union United Automobile Workers of America similar to petitioning union's Exhibit 1, and an authorization for the International Association of Machinists, affiliated with the American Federation of Labor, to represent such employee under the National Labor Relations Act similar to intervenor's Exhibit 4, (except that the employees in the tool room did not sign authorization cards, similar to intervenor's Exhibit 4) and an application for membership in said Internation- Association of Machinists similar to the intervenor's Exhibit 5, as shown by the records of such unions and together with the dates appearing on the company records of the original employment and re-employment of such persons, and the [fol. 487] date on which any such persons were discharged, laid off, or quit, as shown by the company records. In cases where "laid off" dates are given only the last lay off date is listed.

It is specifically stipulated that there is no agreement by respondent that any employee of respondent by signing any such membership application cards ever authorized any such union to represent such employee under the National Labor Relations Act:

It is specifically stipulated by all the parties hereto that the words "quit", "laid off", and "discharged" are stipulated as facts shown by the company records and are not stipulated for any purpose of evidence as to whether or not said parties were laid off, discharged or quit, but that such persons actually ceased their employment with the company on the dates set forth. Under the heading "John-

Lees Division" appear the persons employed in said Division during said time; under the heading "Acme Division" appear the persons employed in said Division during said time; under the heading "Tool Room" appear the persons employed in the Tool Room in said Division during said time:

EXHIBIT A

John-Lees Tool Room.

Name	U.A.W.A.	A.F.L.	Employed	Quit	Laid off	Dischgd.
		A.				
Charles E. Adams		9-17-37	9-17-37	9-28-37		
		B.				
Moses Melvin Byrosd	7-19-37	7-28-37	6-21-37	10-16-37		
Arthur R. Baker		7-28-37	1-30-37			
Joseph Bolander		7-28-37	1-30-37			
Forest Breedlove		7-29-37	1-31-37			
Levi C. Benn	7-19-37		12-13-34	8-13-37		
Robert Bunch	7-19-37		1[illegible] 13-34	8-13-37		
		C.				
Leo E. Chapman		10-1-37	8-16-37			
Leslie Conner		7-28-37	3-8-37			
		D.				
George Frank Devine		7-28-37	5-10-37			
Charles J. Downing			9-14-37			
Russell Dininger		7-28-37	1-30-37			
		F.				
Walter Fouts		7-28-37	1-30-37			
[fol. 488]		H.				
Wilbur L. Hiatt		7-28-37	4-28-37			
Sterl Huber		7-28-37	4-5-37			
Ronald Hilton	8-12-37		9-11-33	8-13-37		
		J.				
Walter R. Jacobs		7-28-37	3-8-37			
		K.				
Bert Kuchler		7-28-37	1-30-37			
Jack Kline		10-5-37	8-23-37		11-3-37	
Chester Kirby	5-28-37		12-13-34	8-13-37		
Michael Leonard Kapustin			5-12-37	6-12-37		
Rudolph Keil	7-19-37		2-1-37	8-13-37		
		L.				
Allie Locke		7-28-37	10-23-34			
Joseph Emmanuel Lusher		7-28-37	5-24-37			
		Mc.				
Griffin McMath			3-2-37	7-26-37		
		M.				
William Merrell		7-28-37	5-4-37			
Russell Morris		7-28-37	4-6-37			
Harry Raymond Mayo		7-28-37	5-15-37		11-2-37	
Arnold Earl Madara			7-7-37	7-29-37		
William A. Meier	8-12-37		1-30-37	8-13-37		

Exhibit A—Continued

Name	U.A.W.A.	A.F.L.	Employed	Quit	Laid off	Dischgd.
			P.			
John I. Pickering		7-28-37	6-21-37			
			R.			
Sheldon Joseph Roll			7-19-37			7-24-37
James A. Richardson		10-7-37	10-7-37		11-2-37	
Henry B. Runkle		10-12-37	10-6-37	10-12-37		
			S.			
George H. Schwarz		7-30-37	5-17-37	9-16-37		
Jesse Edward Siler		9-20-37	9-20-37			
Cecil B. Shock		7-28-37	1-30-37			
Eugene Stapf		7-28-37	6-23-36			
Lannie W. Sulteen		8-18-37	8-10-37			
Marion V. Swift		7-28-37	2-5-37			
Raymond A. Staab		7-28-37	4-20-37			
William Manring Swindell		10-12-37	10-12-37			
Floyd Stevenson	8-3-37		1-30-37	8-13-37		
Grant Steel	6-1-37		2-25-37	8-13-37		
Harold Sharpe	8-1-37		2-15-37	8-13-37		
			T.			
Shelby Tolley	8-7-37		2-11-37	8-13-37		
[fol. 489]						
			W.			
Robert Weeks			2-23-37	6-26-37		
Otis Oliver Wheeler		7-28-37	5-22-37	9-23-37		
Fred R. White	7-19-37	7-28-37	3-15-37			
Robert Walsh Westlund		8-4-37	6-15-37			
Walter Welsh		7-28-37	5-3-37			
Arthur W. Welsh		9-27-37	9-27-37			
Francis Witmer	7-19-37		1-28-37	8-13-37		
Acme Tool Room.						
			A.			
Everett Alley	8-7-37	10-2-37	8-25-37			
Erskine Allison	8-16-37		8-12-35	8-13-37		
			B.			
Walter Baldridge	8-13-37		12-13-34	8-13-37		
Re-employed			9-8-37			
Roger William Boxell			9-27-37			
Fred Bunner			3-29-37			6-17-37
			C.			
John Carroll Castor			10-6-37			
Arthur Carmichael		10-2-37	8-16-37			
Carey Jack Collins		7-28-37	5-4-37			
James Curry			9-14-37			
Lon S. Cole	6-26-37		3-10-37	8-13-37		
James Condon	7-20-37		7-14-33	8-13-37		
Lawrence Clear	8-24-37		4-1-37	8-13-37		
			D.			
Herman Davis	7-19-37		9-20-34	8-13-37		
			E.			
Earl E. Enterkin			9-24-37		10-27-37	
			F.			
John H. Fisher			9-27-37			
Charles Fensel	7-19-37		12-13-34	8-13-37		

Exhibit A—Continued

Name	U.A.W.A.	A.F.L.	Employed	Quit	Laid off	Dischgd.
		G.				
Orliff Marston Grubb		7-28-37	4-12-37			
Newton Garrett	6-12-37		11-19-34	8-13-37		
		H.				
Earl Hirons		7-28-37	3-15-37			
Eugene Harris		7-28-37	2-17-37			
George Hirons		9-10-37	9-10-37			
Maurice Heiss		7-28-37	9-5-35			
		J.				
Len L. Jones	7-20-37		12-13-34	8-13-37		
[fol. 490]		L.				
Ira Lawrence			12-13-34	8-13-37		
Re-employed	8-1-37	9-8-37	9-8-37			
Jacob Lear			12-13-34	8-13-37		
Re-employed	8-6-37	9-8-37	9-8-37			
Ralph Leonard		7-28-37	4-7-37			
George Floyd Line		9-15-37	9-15-37			
		Mc.				
Donald L. McCalister		9-22-37	9-22-37			
		M.				
William Earl Marks		9-20-37	9-20-37			
George W. Morrical		7-28-37	2-24-37			
Alva Otto Morrison		9-21-37	9-21-37			
Robert E. Manlove	7-29-37		6-1-37			
		N.				
Charles Cecil North		9-22-37	9-22-37			
		P.				
Richard Watson Peaa		7-28-37	6-25-37			
		R.				
Rex Richards			5-10-33	8-13-37		
Re-employed			9-7-37			
		S.				
Fred Herbert Spoo		8-2-37	4-8-37			
George W. Stillwagon		7-28-37	10- -35			
Dwight Stiffler	8-13-37		10-1-34	8-13-37		
Re-employed			10-20-37			
		Z.				
Joseph L. Zimmer		7-28-37	3-27-37			

It is further stipulated by all the parties hereto that the International Union United Automobile Workers of America, Local No. 459, had 223 signed cards as stipulated above on August 10, exclusive of the tool room and the polishing and buffing department and the office force and supervisory employees, and that the International Association of Machinists had 15 signed cards as stipulated above on August 10, exclusive of the tool room and the polishing and buffing

department and the office force and supervisory employees, all in the John-Lees Division. That there were approximately 330 persons on the payroll of said division as of said date.

It is further stipulated by all the parties hereto that the International Union United Automobile Workers of Amer-
[fol. 491] ica, Local No. 459, had 141 signed cards as stipulated above on August 10, exclusive of the tool room and the polishing and buffing department and the office force and supervisory employees, and that the International Association of Machinists had 1 signed card as stipulated above on August 10, exclusive of the tool room and the polishing and buffing department and the office force and supervisory employees, all in the Acme Division. That there were 188 persons on the pay roll of said division as of said date.

It is further stipulated by all the parties hereto that the International Union United Automobile Workers of America, Local No. 459, had 20 signed cards as above stipulated on August 10, 1937, in the Tool Room of the Muncie plant of the Serrick Corporation, and that the International Association of Machinists had 37 signed cards as stipulated above, in the Tool Room of the Muncie Plant of the Serrick Corporation on August 10, 1937. That included in said applications are 2 persons who signed cards in both organizations. That on said date there were 63 persons employed in the tool room.

It is further stipulated by all the parties hereto that the International Union, United Automobile Workers of America, Local No. 459, had 19 signed cards as above stipulated on August 6, 1937, in the Tool Room of the Muncie Plant and that the International Association of Machinists had 37 signed cards as stipulated above, in the Tool Room of the Muncie Plant of the Serrick Corporation on August 6, 1937. That included in said applications are 2 persons who signed cards in both organizations. That on said date there were 63 persons employed in the tool room.

That Exhibit "A" shows that as of the 15th day of October, 1937, application cards had been signed by 471 employees of respondent for membership in the International Union, United Automobile Workers of America, and that 298 employees of respondent had signed application cards of the International Association of Machinists, exclusive of the tool room and the polishing and buffing department and the office force and supervisory employees;

that included in said applications are 91 persons who signed application cards in both organizations.

That there were approximately 673 employees on the pay roll of the respondent as of said date, including persons [fols. 492-508] temporarily laid of at this date, exclusive of the tool room, polishing and buffing department and the office force and supervisory employees. That there were 61 employees in the tool room as of said date.

It is further stipulated by the parties that all of the employees of the respondent who were employed in the Tool Room as of August 6, 1937 and as of August 10, 1937 and who signed application cards for membership in the International Association of Machinists, Tool and Die Makers, Lodge Number 35 had paid their initiation fees and membership dues as of said dates. That all of the employees of the respondent who signed application cards for membership in the International Association of Machinists, other than in the tool and die room, also signed authorization cards similar to Intervenor's "Exhibit 4".

Respectfully submitted, National Labor Relations Board, by Colonel C. Sawyer, Regional Attorney. The International Union, United Automobile Workers of America, Local No. 459, by Paul S. Brady, Attorney. The Serrick Corporation, by White & Haymond, Its Attorney-. International Association of Machinists, by C. F. McDonald, Representative.

* * * * * * *

[fol. 509] EXHIBIT No. 6

Employees Acme-Lees Division of the Serrick Corporation Working in Tool Room on August 10, 1937

Earl Hirons	Walter Welsh
Fred Spoo	Raymond Staab
Marston O. Grubbs	Russell Morris
Lon S. Cole	Sterl Huber
Eugene Harris	Harry Mayo
Rex Richards	Wilbur Hiatt
Herman Davis	Leslie Conner
Maurice Heiss	Floyd Stevenson

EXHIBIT No. 6—Continued

Erskine Allison
Dwight Stiffler
George W. Morrical
Walter Baldridge
James Condon
Robert E. Manlove
George Stillwagon
Charles Fensel
Ralph Leonard
Joseph L. Zimmer
Ira Lawrence
Jacob Lear
Len L. Jones
Carey J. Collins
Richard Peaa
Lawrence H. Clear
Newton Garrett
Fred R. White
Moses M. Byroad
John I. Pickering
George Schwarz
George E. Devine
Joseph Lusher
William Merrell
Grant Steel
Russell Dininger
Levi C. Benn
Arthur R. Baker
Eugene Stapf
Wm. A. Meier
Robert W. Westlund
Allie Locke
Forrest Breedlove
Robert Bunch
Shelby Tolley
C. B. Shock
Francis Witmer
Bert Kuchler
Harold Sharp
Walter Fouts
Marion V. Swift
Rudolph Keil
Walter Jacobs
Joe Bolander
Ronald Hilton
Chester G. Kirby
Otis Wheeler

NATIONAL LABOR RELATIONS BOARD. CASE NO. XIR65 XIC170.

RESPONDENT EXHIBIT No. 7

In the Matter of SERRICK CORP. Date 11/5/37. Witness, Oscar McCoy. Ethel E. Fisher, Official Reporter. By N. Hosford.

3/20/37

Notice!!

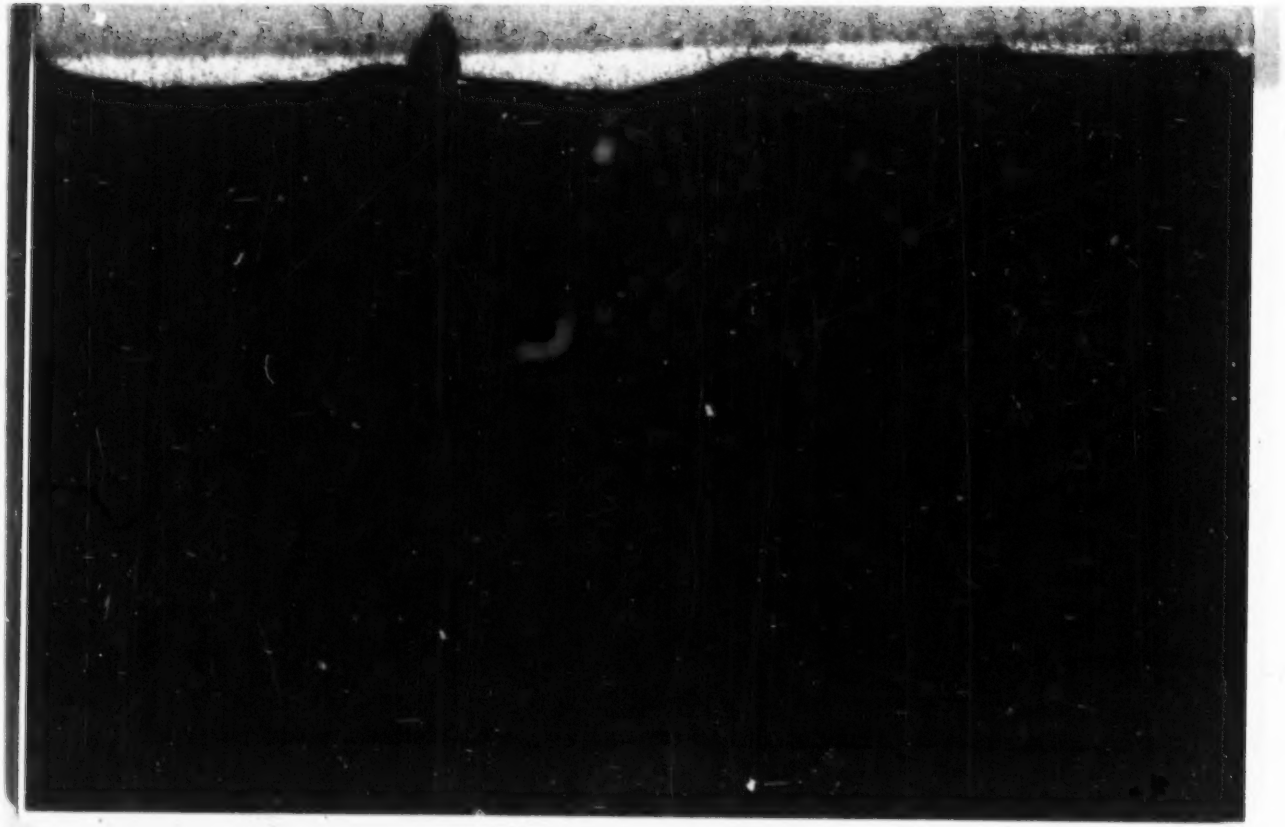
Starting at once, Mr. McCoy will be in full charge of the tool room, both Acme and John Lees Division.
[fols. 510-514] Walter Dominick will be assistant foreman in charge of Acme Tool and Machine Repair.

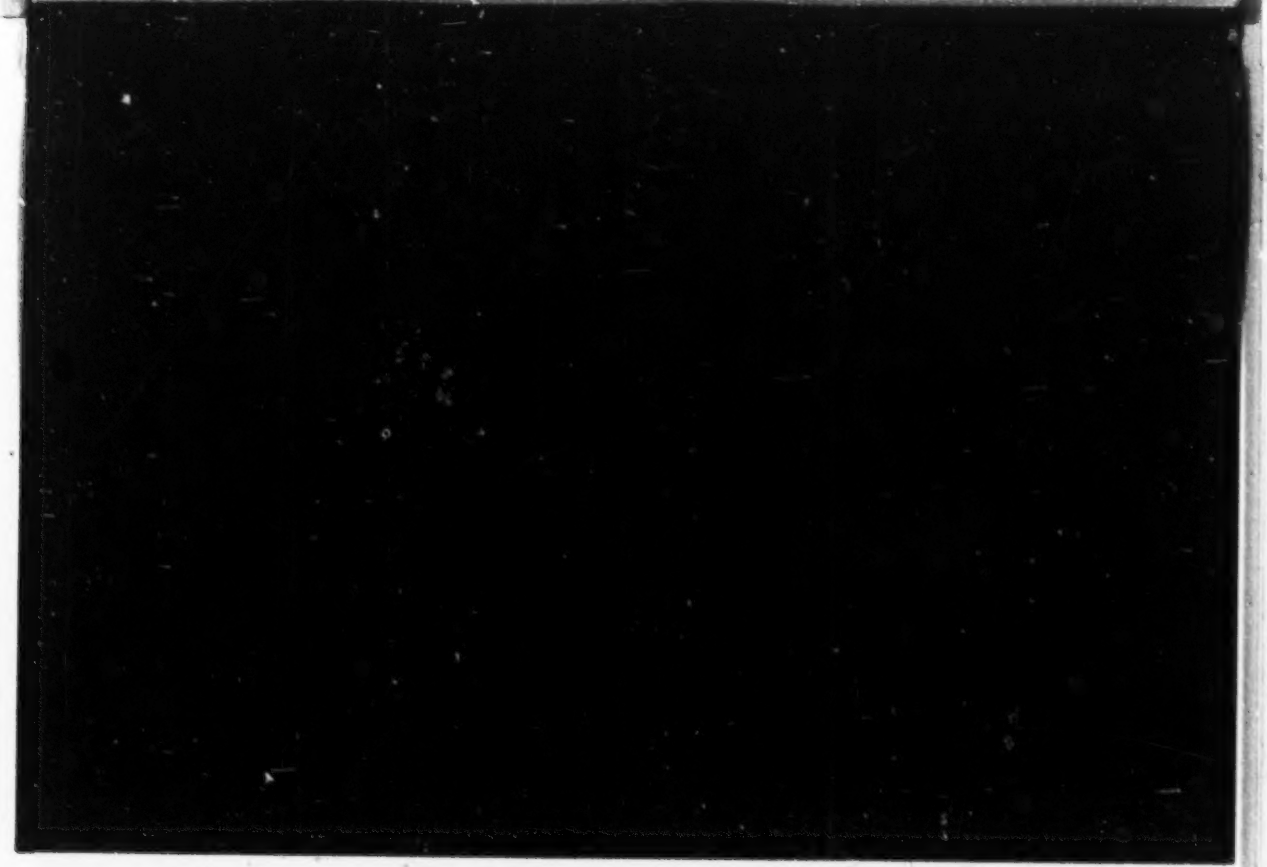
R. A. Wise, Tool Supervisor.

* * * * * * *

BLANK PAGE

BLANK PAGE





CONSTITUTION OF THE GRAND LODGE, DISTRICT AND LOCAL LODGES OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AMENDED BY REFERENDUM VOTE JULY, 1934; EFECTIVE OCTOBER 1, 1934; AMENDED BY REFERENDUM VOTE JULY, 1935; EFFECTIVE OCTOBER 1, 1935. REVISED BY COMMITTEE ON LAW AS RECOMMENDED BY THE NINETEENTH CONVENTION OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, HELD IN THE CITY OF MILWAUKEE, WISCONSIN, SEPT. 21 TO OCTOBER 2, 1936, AND THEREAFTER ADOPTED BY REFERENDUM VOTE IN THE MONTH OF DECEMBER, 1936; EFFECTIVE APRIL 1, 1937.

ORDER OF BUSINESS OF GRAND LODGE

1. Report of Committee on Credentials.
2. Roll call of members.
3. Reading of the Minutes.
4. Reports of Officers, commencing with I. P.
5. Reports and petitions of Local Unions.
6. Reports of special committees.
7. Receiving communications and bills.
8. Unfinished business.
9. New business.
10. Good and welfare.

PREAMBLE

Believing that the right of those who toil to enjoy to the full extent the wealth created by their labor is a natural right and realizing that under the changing industrial conditions incident to the enormous growth of syndicates and other aggregations of capital it is impossible for those who toil to obtain the full reward of their labor other than through united action; and recognizing the fact that those who toil should use their rights of citizenship intelligently, through organizations founded upon the class struggle and acting along co-operative, economic and political lines, using the natural resources, means of production and distribution for the benefit of all the people, with the view of restoring the commonwealth to all those performing useful service to society;

Now, Therefore; We, The International Association of Machinists, pledge ourselves to labor unitedly in behalf of the principles herein set forth, to perpetuate our Association on the basis of solidarity and justice, to expound its objects, to labor for the general adoption of its principles, to consistently endeavor to bring about a higher standard of living among the toiling masses.

182

PLATFORM

The Grand Lodge of The International Association of Machinists aims:

1. To bring within the organization all employees, male and female, who are actively engaged in, or connected with, the machinists' trade.

2. To adopt and put into active operation an effective plan to stabilize employment for all the members of our Association.

3. To secure the establishment of a legal apprenticeship system of four (4) years.

4. To impress upon all employers the necessity of paying the full current wages weekly, giving preference in employment to members of organized labor, and abolishing personal record, physical examination, and old age limits imposed by employers.

5. To settle all disputes arising between our members and employers, by direct negotiation whenever possible, and in cases where Arbitration is resorted to, to reserve our freedom to accept or reject the decision rendered except in those cases where it is previously agreed by both parties that the decision shall be binding.

6. To shorten the hours of labor to thirty per week, namely five days of six hours per day; Saturday to be a holiday, maintaining for our members, a cultural standard of living guaranteed by an adequate annual income.

7. To adopt and advocate a plan of co-operation with other kindred crafts, with the ultimate object of amalgamating all closely related metal trades, thereby eliminating strikes of one organization at a time and by concerted action making it possible for all to reap the full benefit of their labor. This shall not be construed to favor the theory of industrial unionism.

8. To stimulate the political education of the members to understand their political rights and use the ballot intelligently, to the end that the Government may be a government for, of and by the people, and not to be used as a tool to further the ends of combinations of capital for its own aggrandizement.

9. To urge the membership to vote only for and support candidates who are in favor of this platform and the following political demands: Initiative, Referendum and Recall, National Income Tax Law, National Inheritance Tax Law, National and State Employers' Liability Law; all judges, without exception, to be elected by vote of the people; national law granting pensions for old age or total disability and accident benefits; public ownership of all public utilities; woman suffrage; change of the Constitution of the United States or any country under our jurisdiction which now declares these subjects or questions to be unconstitutional; self-government of cities; abolition of contract system on all public work—city, county, state or national—such work to be done on the day labor plan at union wages.

10. That no inferior Federal judge shall set aside a law of Congress on the ground that it is unconstitutional. That if the Supreme Court assumes to decide any law of Congress unconstitutional or by interpretation undertakes to assert a public policy at variance with the statutory declaration of Congress, which alone under our system is authorized to determine the public policies of government, the Congress may by repassing the law nullify the action of the court. Thereafter the law to remain in full force and effect precisely the same as though the court had never held it to be unconstitutional.

11. The labor of a human being not being property, we demand the abolition of the use of injunctions in labor disputes on the grounds that it is a judicial usurpation of the constitutional rights of our citizens.

JURISDICTION OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS

The Jurisdiction of the International Association of Machinists includes any person who has served an apprenticeship of four years at the machinist trade, or who has acquired a fundamental knowledge of shaping, sizing, turning, boring, fitting, riveting, the operating of electric, thermit and oxy-acetylene welding apparatus and the adjusting of metal parts of machinery of any character, whether such metal be steel, iron, brass, lead, copper, aluminum, duralumin, bronze, or any other substitute used therefor; as well as any person who may have worked at the trade four years either as a vice hand, lathe hand, planer hand, slotting machine hand, shaper hand, milling machine hand, horizontal or vertical boring mill hand, screw machine hand, operators of Gisholt, Jones and Lamson and all other turret lathes, and gear cutters and all other machine tools. Floor hands, machine adjusters, millwrights or general erectors of machinery, jig, die, tool and mold makers, metal pattern makers, Diesel Oil and Electric machinists. The operating of electric, gas and other mechanical cranes and conveyors used in connection with machinists' work. Mechanical chauffeurs who are required to make repairs to their equipment. Sewing and knitting machine adjusters and adjusters of all kinds of automatic, semi-automatic, and self contained machinery. Fitting together and installing valves of all kinds and flange work on high pressure piping. Automobile, aircraft and moving picture machinery builders, and repairmen.

Classification of Work Included

The making, erecting, assembling, installing, maintaining, repairing or dismantling of all or any parts thereof of all machinery, engines, motors, pumps, Diesel, and all other metal power devices, either transmission, excavating, elevating, shooting or conveying; whether driven by hand, foot, steam, electricity, gas, gasoline, naphtha, benzol, oil, air, water or other power, including all metal appurtenances thereto, composed of steel or iron,

whether structural, angle, T, boiler, galvanized, ornamental, cast malleable, bar, tube, pipe, rod, shafting, sheet or plate; or of nickel, bronze, tin, lead, copper, brass, aluminum, babbitt or other metal substitute therefor.

The manufacture and installation of all machine tools. The operation of all machines used in the manufacture of machine-finished metal parts and devices and all bench and vice work pertaining thereto, and all machinists' work on steam, gas, gasoline, naphtha, benzol, oil, air, and water-tight work.

All riveting, caulking, cutting, chipping, patching, grinding, turning, sizing, boring, fitting, laying out, shaping and drilling pertaining to machinists' work. All drilling, cutting and tapping in boilers, tanks, drums, frames or other structures required for engine and machinery attachments, mountings, or other metal construction and installation.

All oxy-acetylene, electric, oil or thermit welding when used to substitute the former method of performing new or repair work, including dismantling. All lubricating devices, injectors, and inspirators and parts thereof, and attachments thereto. All devices used in the transmission of power except electric wiring, this to include all line and counter shafting, shaft hangers, sheaves and pulleys.

All instrument, gauge tool and die making, metal mold, novelty, model and metal pattern making and die sinking; the making of jigs, templets, spiral and coil springs, and all molds for the shaping of glassware.

The manufacture and installation of all printing, paper and pulp-making machinery. The manufacture and installation of all brewery machinery, including all soakers, pasteurizers, bottle washers, crowning machines, bottle-filling devices and conveyors. The manufacture and installation of all factory, mill and laundry machinery.

The manufacture and repair of all counting, recording, and correspondence devices, such as cash registers, typewriters, adding machines, sealing and addressing devices and all other office machinery.

The manufacture, repairing and maintaining of all automobiles, trucks, busses, tractors, firearms, fire engines, locomotives, hydroplanes and aeroplanes, agricultural machinery and mining machinery, rock drills and pneumatic devices used as hand tools or for the transmission of power.

The manufacture and installation of all ice making and refrigerating machinery. The manufacture and installation of all abattoir, bakery and confectionary machinery, textile, carding and gin machinery, refining machinery, and machinery used in reducing plants, rock-crushing and quarry machinery, concrete mixers and cement mill machinery, rolling mill and steel converting machinery, loading and unloading machinery and traveling roadways.

The manufacture, installation, repairing and maintaining of all machines used in making malt, cans, nails, pottery, horseshoes, brick, shoes, hats, clothing, pianos, organs, musical and surgical instruments, tobacco, cigarettes and cigars, flour, cereals and all other products where mechanical devices are necessary for the making.

The manufacture and installation of all automatic stokers, all mechanical devices used in amusement parks, all dredging machinery, and all hoists, elevators, loweratoms, escalators, derricks and other lifting or hoisting devices.

The inspection of all machinery, ordnance, and engines, including locomotives, and the operating of all power machinery during the period of control or until accepted by the purchaser.

The operation and repairing of towing and coaling machinery in the Panama Canal Zone.

Marine Work.

All marine work as follows:

The installing, assembling, dismantling and repairing of all engines, pumps, dynamos, refrigerating machinery, steering gear, winches, windlasses, capstans or other devices used in handling the ship.

The removing and replacing of the rudder, propeller shaft and propeller wheel and the placing of all deck fittings and mast fittings, including mast headlights.

The installing and repairing of all condensers, evaporators, feed-water heaters, overhauling and repairing of all valves, either steam, water, air, gas, oil, or other liquids and strainers attached to hull.

The installation of all pipes, pipe hangers, valves, and fittings for engines, boilers, ice machines, evaporator plants, telemotors, air compressors, and power pumps.

The installation of deck operating gear for all valves.

The boring, facing, chasing or tapping and drilling holes for bolts of all pipe flanges.

The bending, threading, and installing, of tubes in boilers in which threaded tubes are used.

The bending, welding, and installation of heater coils used for fuel oil tanks, or heating purposes.

The installation of all condenser and feed-water heater tubes, whether rolled, screwed, or ferruled.

The installation of all tubes in oil heaters and coolers, except those under jurisdiction of the coppersmiths.

The installation of all gratings, ladders, and hand rails, port lights, ventilator operating gear and watertight doors.

Electric and Internal Combustion Engines and Cars.

The building, installation, inspection, adjusting, maintaining, removal and overhauling of pantographs and trolley poles shall be machinists' work, including the building of pantograph shoes and replacement of same whether the pantograph is on or off locomotive and the changing of insulated support brackets, lathe and other machine work.

The assembling, installing, inspecting, maintaining, removing and overhauling of all parts of the main and braking controllers with the exception of insulating materials, leads and wires.

The removing, dismantling, overhauling, assembling, installing, inspecting and maintaining of all air cylinders, magnet valves, cam shafts, bearings, rollers, castings, adjustment springs and metal housings used in the construction and operation of reverser switches, series parallel switches, transfer switches, group switches and contactors.

The assembling, installing, inspecting and maintaining of all mechanical parts of main and auxiliary switches and ground switches.

The assembling, installing, maintaining, inspecting, and overhauling of clutch and gear assembly on motor operated rheostats.

The assembling, installing, inspecting, maintaining, dismantling and overhauling of traction motors, blower motors, heater motors, rheostat motors, air compressor motors, motor generator sets, axle generators, control generators and slip rings (excluding field coils, insulators

and electrical connections:) the assembling, finishing either by hand or bench work, drilling, tapping, and bolting of pole pieces; the dismantling, repairing and assembling of brush holders; the drilling, tapping and repairing of brush holder studs; the fitting of all metal parts of commutators, including segments; the turning and machine slotting of all commutators whether done in lathe or in armature housing; the pressing in and out of armature shafts; the machining, repairing and fitting of armature cores; the repairing and fitting of all covers for motors, housings and compartments.

The installing, inspecting, adjusting, removing and repairing of air compressor governors.

The grinding, filing and repairing of grids and the installing and removal of grid banks, with the exception of making and breaking electrical connections.

The removing and installing of electric cab heaters and the removal and application of covers to same where they are retained by cap screws or tap bolts; the removing and installing of headlight cages; the removing, repairing, installing and maintaining of electro-pneumatic pantograph valves, sander valves, regenerative interlock valves and automatic control switches with the exception of electric contacts and wiring, shall be machinists' work.

Removing and applying headlight, lamp and flagstaff brackets and supports, eave guards and hand rails.

Side rods, main rod, knuckle and driving pin work. Driving brake and spring rigging work. Fitting up and repairs to driving and truck boxes, including replacing of brasses.

Examination, repairing and aligning jack shafts. Refitting jack shaft collars and jack shaft casings. Repairing and maintaining air brake equipment and air compressors.

Drilling driving and truck wheels by use of ratchets or portable motors for hub liners. Applying driving and truck wheel hub liners. Driving and truck wheel tire work. Drilling, reaming and tapping holes in cabs and frames for bolts and parts.

Turning and dressing journals, and all frame and truck work, including stripping and rebuilding.

Removing and replacing main motors, including gears and bearings, and shifting gears.

Machinists' work in connection with raising cab, running cut and replacing trucks and lowering cab.

Mallet coupler device between units.

Removing and replacing circulating pump and motor, except pipefitters and electrical work.

Removing, repairing and replacing work in connection with water rheostats, hand pumps and lubricators.

Examining, removing, repairing and replacing bearings.

Installing and relocating braces, stay rods, oil guards, hand brakes, air ducts, sand boxes and bellows under cab.

Whistle and bell work.

Installing and maintaining machinists' work in connection with turbine engines, motors, pumps and auxiliaries in powerhouse.

Repairs to air hammers, air motors, vise, floor and drop pit work, as well as the handling of work generally recognized as machinists' work.

Removing and replacing phase converters.

Machinists' work in connection with dismantling of phase converters, such as removal of bolts, parts, bearing caps, bearings and clamps.

Machinists' work in connection with assembling phase converters, including detail parts.

Lathe and other machinists' work in connection with construction of pantographs.

And all other work on these engines, cars and machines now covered in the general classification in our Constitution.

All of the foregoing, and in addition thereto any other work which does now, or in the future may, as industries develop, fall naturally within the scope of the jurisdiction of The International Association of Machinists, shall constitute work coming under its jurisdiction, and shall be performed by members of the aforesaid organization.

CONSTITUTION OF THE GRAND LODGE
of the
International Association of Machinists

ARTICLE I.

Name and Location.

SECTION 1. This organization shall be known by the title and name of "THE GRAND LODGE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS," and its principal office and headquarters shall be permanently located in the city of Washington, D. C.

Membership and Jurisdiction.

SEC. 2. The Grand Lodge of The International Association of Machinists shall consist of an Executive Council (including the International President and General Secretary-Treasurer) and the representatives of local lodges who are duly elected, qualified and seated as delegates in the quadrennial and special conventions provided for in Article X of this Constitution. It shall have power to grant charters for the purpose of organizing, supervising, controlling, and generally directing district and local lodges in any State, territory, or dependency of the United States of America, Mexico and the Dominion of Canada.

Government.

SEC. 3. The government and superintendence of all district and local lodges shall be vested in this Grand Lodge as the supreme head of all such lodges under its jurisdiction. To it shall belong the authority to determine the customs and usages in regard to all matters relating to the craft.

Government Between Conventions.

SEC. 4. Between conventions all Executive and Judicial Powers of the Grand Lodge shall be vested in the Executive

191

Council, which shall be composed of the International President, the General Secretary-Treasurer, and 7 General Vice-Presidents.

ARTICLE II.

Grand Lodge Officers and How Chosen.

Officers.

SECTION 1. The officers of the Grand Lodge of the International Association of Machinists shall be an International President, a General Secretary-Treasurer, seven (7) General Vice-Presidents, one of whom shall be from Canada, and an Editor of the Machinists' Monthly Journal.

Delegates to The American Federation of Labor, delegates to the Trades and Labor Congress of Canada and five (5) members of the Committee on Law, one of whom shall be from Canada, shall be elected concurrently with the officers of the Grand Lodge.

Qualifications.

SEC. 2. Candidates for office in the Grand Lodge, delegates to the American Federation of Labor, delegates to the Trades and Labor Congress of Canada, and the Committee on Law must be members who have been in continuous good standing for at least five years immediately prior to their nomination and free from delinquencies of any nature to the Grand Lodge or any district or local lodge of The International Association of Machinists. Such candidates must be working at the trade at the time and for one year next preceding their nomination. Salaried officers or employees of the Grand Lodge, district lodges, local lodges and The American Federation of Labor are excepted from this provision, provided such employment and other employment at the trade, separately or jointly, has been continuous during the twelve months next preceding their nomination. The qualification "working at the trade at the time and for one year next preceding their nomination," shall not be required of or apply to members of this Association who have been unable to obtain employment as a result of a strike, lockout, discrimination, or temporary physical disability.

192

Endorsement for Nomination.

SEC. 3. On the 1st day of January, 1929, and on the 1st day of January of every fourth year thereafter, the General Secretary-Treasurer shall issue a circular to all local lodges calling for endorsements of nominees for all Grand Lodge officers, delegates to the American Federation of Labor, delegates to the Trades and Labor Congress of Canada, and members of the Committee on Law, which circular shall be accompanied by proper blanks or forms for the return of endorsements for nomination by local lodges.

After the receipt of said circular, and at the last regular meeting in the month of January—of which meeting notice shall be served upon members by shop bulletin, mail or otherwise—local lodges may, by a majority vote of those voting, endorse one candidate for each elective office, delegation and committee, and on or before 12 o'clock midnight January 31st the recording secretary of each local lodge shall forward to the General Secretary-Treasurer by registered mail a correct list of all endorsements for nominations and the office for which the individual is endorsed, together with his lodge and card number, upon the blanks or forms provided therefor by the General Secretary-Treasurer.

Filing and Publication of Endorsement.

SEC. 4. All such endorsements for nominations for Grand Lodge officers, delegates and committees must be on file in the office of the General Secretary-Treasurer by 12 o'clock noon on February 8th; and the General Secretary-Treasurer shall thereafter tabulate the same and cause the full and complete tabulation to be published in the next issue of the Journal showing the local lodges making the endorsements, the individuals endorsed, the office for which the individual is endorsed, and designating the individuals who are thereby chosen as nominees under the provisions of Section 5 of this Article.

Number of Nominees.

SEC. 5. From the endorsements received from local lodges, there shall be selected for each elective position the

two candidates receiving the highest number of endorsements, and the two so selected shall constitute the candidates on the final ballot.

Pledge to Accept Nomination.

SEC. 6. On or before February 12th the General Secretary-Treasurer shall, by registered letter, notify all candidates who have received the endorsement of ten (10) different local lodges, of that fact; and each candidate so notified shall, within ten days after receipt of notification, inform the General Secretary-Treasurer by registered mail of his acceptance or declination of the endorsements for nomination, together with a statement that he is duly qualified under the provisions of this Constitution, which statement shall be certified by the financial secretary of the local lodge of which the candidate is a member. On failure of any candidate to comply with this provision, it shall be the duty of the General Secretary-Treasurer to strike his name from the list, and to at once notify the candidate or candidates receiving the next greatest number of endorsements of any declination that has been received or of the failure of any candidate to accept.

Preparation and Description of Ballots.

SEC. 7. After the foregoing provisions have been complied with, the General Secretary-Treasurer shall, not later than 12 o'clock noon, March 15, prepare the ballot and have printed thereon the names of all eligible candidates, together with the number of the lodges of which they are, respectively, members, said names to be arranged in order according to the number of endorsements received by each candidate for the office stated. All ballots shall bear the seal of the Grand Lodge, and be so arranged that a voter may with ease designate his choice by marking a cross (X) opposite the names of those for whom he wishes to record his vote. Whenever two or more are to be elected to the same office, committee or delegation, a failure to vote for the required number of candidates therefor shall invalidate the vote as to such office, committee or delegation. Ballots shall be perforated so that the name, address, lodge and card number of member voting may be detached.

Both the ballot and the perforated detachable stub, shall contain a corresponding serial number.

The General Secretary-Treasurer shall supply all lodges, free of cost, with a sufficient number of such ballots on or before the first day of April, and no other ballots shall be used. He shall furnish tally sheets in duplicate, upon which shall be tabulated the votes of the members of the lodge. One tally sheet shall be retained by the Recording Secretary of the local lodge and one shall be returned to the General Secretary-Treasurer.

Place of Voting.

SEC. 8. The election of officers of the Grand Lodge, Committee on Law, delegates to the American Federation of Labor, delegates to the Trades and Labor Congress of Canada, or other bodies with which this Association is, or may be affiliated, shall be held on the first regular meeting of each local lodge, in the month of April, in the lodge room where the regular lodge meetings are held, and upon no other day or in any other place. Members temporarily absent from the city may vote as provided by Section 10 of this Article.

Qualification to Vote.

SEC. 9. Only members of local lodges and individuals affiliated with the Grand Lodge as provided for under Article XX of this Constitution, who are in good standing and free from delinquency of any nature to the Grand Lodge, district or local lodges shall be allowed to vote at any election.

Notification—Absent Members.

SEC. 10. All members shall be notified by mail or shop bulletin of such election, and ballots shall be mailed to members who reside in outlying districts more than fifteen (15) miles from the city limits of the city in which the lodge is located, and to members temporarily absent from the city. Such ballots must be returned to the Local Lodge within the time specified for receiving votes under Section 12 of this Article.

Inspectors of Election.

SEC. 11. At the last regular meeting in the month of March, of each four-year period following March, 1929, each local lodge shall elect three members as inspectors of election who shall receive, record and count the vote of the members of their local lodge. In case one or more of said inspectors are unable to act, then the president of said local lodge shall fill the vacancy by appointment.

Time and Method of Voting.

SEC. 12. Votes shall be received by the inspectors of election from the opening to the closing of the local lodge at the first regular meeting, and at no other meeting, in the month of April. Provision must be made to accommodate members who are working nights, and in order that all may have an opportunity to record their vote, the regular lodge meeting during which the vote is to be taken, may be convened as early as 8 A. M. All ballots must be marked in ink or pencil. All votes shall be deposited in the presence of at least two of the inspectors. Each voter shall write his name, lodge and card number in the space provided upon the perforated register slip attached to the ballot provided for that purpose. The inspectors shall require each voter to present his due book for inspection and shall mark the same in order to show that the member has voted. No member shall be allowed to fill out the ballot for any other member. Any member who, after due trial, is found guilty of illegal voting or in any other way preventing an honest election shall be liable to a fine or expulsion.

The General Secretary-Treasurer shall forward a ballot by mail to the last known address of each individual who holds a membership in direct affiliation with the Grand Lodge under the provisions of Sec. 1 of Article XX of this Constitution. Such affiliated members may vote by marking their respective ballots as though voting in a local lodge and shall return their marked ballots to the General Secretary-Treasurer within the time limits prescribed for local lodges. The General Secretary-Treasurer shall count the votes of all such affiliated members and report the same in the detailed statement required under Section 14 of this Article.

Tabulation of Returns and Care of Ballots.

SEC. 13. The inspectors of election of each local lodge, with such assistance as the lodge may deem necessary, shall upon the close of the polls, proceed to count the vote cast, tabulate the results in duplicate on the tally sheets furnished by the Grand Lodge, and, within seventy-two (72) hours from the close of the polls, forward one copy thereof, together with all ballots cast, to the Grand Lodge Election Tellers, in care of the General Secretary-Treasurer, by registered mail. The ballots and tally sheets shall be mailed in special containers or envelopes, to be furnished by the General Secretary-Treasurer, and plainly marked to designate their contents. These packages and envelopes shall only be opened in the presence of the three Grand Lodge Election Tellers. Ballots and tally sheets not mailed within seventy-two (72) hours after the close of the polls shall not be counted. The duplicate copy of the tally sheets shall be placed in the hands of the Recording Secretary of the Local to be spread upon the records of the lodge. The perforated register slips containing the name, address, lodge and card number of each member voting, shall be retained by the local lodge for a period of ninety days and shall be surrendered to the Grand Lodge Election Tellers if required and ordered by them.

Representation at Count.

SEC. 14. Each nominee for President shall on or before the first day of May select a member of the Association, residing within 250 miles of the Grand Lodge Headquarters, to act as his teller. In the event that there is only one nominee for President, then the two candidates for General Secretary-Treasurer shall select the tellers. In the event that there is only one nominee each for the offices of President and General Secretary-Treasurer, then the two candidates for Editor of the Journal shall select the tellers. The spirit of this section is to be construed that opposing candidates shall have the right to select the tellers in rotation and where a candidate is unopposed he shall not have the right to select a teller.

The two tellers thus selected shall employ as a third teller a certified public accountant from the District of

Columbia, who shall act as chairman of the Grand Lodge Election Tellers. The two Grand Lodge Election Tellers chosen by candidates shall, while engaged in counting and supervising the Grand Lodge election returns, receive as compensation $10 per day, with railroad fare, and actual hotel expenses, if residing outside the city of Washington.

Counting the Votes.

SEC. 15. The General Secretary-Treasurer shall be custodian of all ballots and tally sheets, and he shall, after the Grand Lodge Election Tellers are duly organized and on their demand, surrender unopened and in their original containers all ballots and tally sheets.

The Grand Lodge Election Tellers shall meet at the Grand Lodge offices on the first day of May and proceed with the count. The Grand Lodge Election Tellers shall have full charge of the counting of the ballots, assisted by such help as they may require, to be furnished by the General Secretary-Treasurer. They shall have power to adopt rules to govern their work, and to hear complaints, and make adjustments, and render decisions such as their judgment dictates. After they have counted and tabulated the vote they shall render a report containing a detailed statement of the vote cast in each lodge for the respective candidates. Their report shall be published in the June issue of the Journal.

Declaration of Election.

SEC. 16. The nominees receiving the highest number of votes for the respective offices shall be declared duly elected by the Grand Lodge Election Tellers.

Second Ballot.

SEC. 17. In case that candidates for any office receive an equal number of votes, or a tie vote, their names shall be resubmitted in accordance with Section 7, Article II of this Constitution, and such procedure shall be continued until some one candidate shall receive a greater number of votes than the other candidate contesting for the same office. If the second or other succeeding ballots do not

result in an election prior to the expiration of the term of office of the then incumbent, said incumbent shall be retained in office until his successor is duly elected.

Filling Vacancies.

SEC. 18. Should a vacancy occur in any Grand Lodge office between elections, through any cause (other than a Recall), the vacancy shall be filled in accordance with the provisions of Article III, Section 4, and Article IV, Section 2.

Installations.

SEC. 19. Grand Lodge officers shall be installed by the International President, or his deputy, and they shall assume the duties of their respective offices the first day of July following their election, or as soon thereafter as the result is made known; Provided, that each officer shall qualify within ten (10) days after being notified to appear for installation.

Recall Provisions.

SEC. 20. (a) Any local lodge in good standing with the Grand Lodge of the International Association of Machinists may propose the recall of any one or more of the Grand Lodge officers by filing with the General Secretary-Treasurer a petition for the recall of such officer or officers, together with the endorsements thereof under the seal of at least fifteen (15) per cent of all of the local lodges in good standing with the Grand Lodge of the International Association of Machinists, not more than fifteen (15) of which endorsing local lodges shall be located in any one state, province or territory. Every petition for a recall must contain a clear, concise statement of the specific charges against such officer or officers upon which the proceedings are based. All circulars issued by a local lodge for the purpose of securing the endorsements of other local lodges must be identical as to content and form including the endorsement form attached thereto. All such circulars shall bear the date of issuance, be made returnable to the local lodge issuing the same and deposited by

such local lodge with the General Secretary-Treasurer within forty-five (45) days after the date thereof.

(b) Upon receipt of the petition and endorsements for recall, the General Secretary-Treasurer shall forthwith notify the officer or officers whose recall is sought and furnish him or them with a correct copy of the petition and the numbers of the local lodges appearing as endorsers thereof, and such officer or officers may within ten (10) days thereafter file a written statement of defense, containing not more than 500 words, with the General Secretary-Treasurer, who shall cause the same to be printed and mailed to all local lodges concurrently with the call for the endorsements for nominees next hereinafter provided for.

(c) On the first day of the month next following, the General Secretary-Treasurer shall issue a circular to all local lodges calling for endorsements of nominees for the office or offices held by the officer or officers whose recall is sought. The selection of candidates and the election, and the tabulating and counting of the votes, except as hereinafter modified, shall proceed in accordance with the election laws hereinabove set forth, substituting the name of such months as may be necessary to hold an interim election in place of those months specified in Sections 3 and 4 of this Article.

(d) Unless the officer whose recall is sought lacks the necessary qualifications or files a written declination with the General Secretary-Treasurer, his name shall be printed upon the official ballot together with the name of the one other candidate who has received at least twenty-five (25) endorsements and the greatest number of endorsements as candidate for nominee for that office. Should the officer whose recall is sought decline to be a candidate or lack the necessary qualifications, then the names of two persons who have each received at least twenty-five (25) endorsements and greatest and next greatest number of endorsements, respectively, as candidates for nominee for such office shall be printed upon the official ballot as candidates for such office.

(e) The candidate for any office who receives the greatest number of votes in any recall election shall be promptly notified of his election by the General Secretary-Treasurer. If the officer whose recall is sought, be not elected, his tenure of office shall terminate fifteen (15)

days after the result of the election is announced and the newly elected officer shall thereupon assume the duties of the office.

ARTICLE III.

International President.

SECTION 1. The International President shall preside at all meetings of the Grand Lodge. He shall serve as chairman and as a member of the Executive Council. He shall preserve order, and in all cases where the vote is equally divided in a convention or a meeting of the Executive Council he shall cast the deciding vote. He shall enforce the laws of The International Association of Machinists; decide all questions of order and usage and all constitutional questions, subject, however, to an appeal as provided in Section 6, Article XXI of this Constitution.

Chief Organizer.

SEC. 2. The International President shall be the chief organizer of the Grand Lodge and shall have full control of all Grand Lodge representatives and of all organizing. He shall provide suitable literature for organizing purposes and have the authority when conditions warrant to appoint Grand Lodge representatives and assign them to such localities and for such particular terms and duties as shall be for the best interests of the organization. All of which shall be subject to the approval of the Executive Council.

Signing Orders.

SEC. 3. The International President shall countersign all orders for the payment of money by the Grand Lodge and for the withdrawing of money on deposit to its account.

Officers Permanent and Temporary and the Committees.

SEC. 4. The International President shall assign the elected Vice Presidents to such divisions or territories as are necessary to promote the best interests of our Organi-

zation, but in no case shall he make such assignment to such division or territory unless the Vice-President so assigned has received at least a majority of the votes cast from such division or territory at the last general election.

He shall also appoint all officers pro tem or Committees not otherwise provided for, and may deputize other members of the Organization in good standing to perform any of the duties of his office, except that during his absence from the Grand Lodge Headquarters he shall, if he deems it necessary, designate one of the elective Grand Lodge Officers to exercise the authority of his office.

In cases of vacancies occurring in any Grand Lodge office, the President shall temporarily appoint a qualified member to fill such office, but such appointment shall not be made for a longer period than is necessary to hold a special election under the provisions governing our general elections.

Supervision of District and Local Lodges.

SEC. 5. The International President shall have the direction and supervision of all district and local lodges, with full authority to suspend individual members, or district or local lodges, for incompetency, negligence, insubordination, or other failure to properly perform their duties as members of this organization and for violation of the provisions of the Constitution of the Grand Lodge or the constitution of local lodges. With the approval of the Executive Council he may revoke the charter of any district or local lodge found guilty by the Executive Council of a violation of the Constitution of the Grand Lodge, or the constitution for local lodges of the International Association of Machinists.

International President's Annual Report.

SEC. 6. The International President shall keep a record of his official acts and make a detailed report thereof in January of each year in circular form, which circular shall also contain such recommendations as he deems advisable for the welfare of the organization, and shall mail a copy thereof to each local lodge.

All important decisions rendered by the International President shall be published concurrently in the minutes of the meetings of the Executive Council.

Visiting Lodges.

SEC. 7. Should any district or local lodge be involved in trouble, and in all cases when a grievance is submitted to the Executive Council, the International President shall visit said district or local lodge in person or by deputy.

Report to Executive Council.

SEC. 8. Whenever the International President submits, through correspondence, any question to the members of the Executive Council for their decision, he shall notify the members of such Council, and all other parties in interest, of the decision of the Executive Council immediately upon receipt thereof.

Salary of International President.

SEC. 9. For the faithful performance of his duties, the International President shall receive an annual salary of $7,500 payable in 52 equal weekly installments.

ARTICLE IV.

Executive Council.

Membership and Meetings.

SECTION 1. The Executive Council shall consist of the International President, the General Secretary-Treasurer and the General Vice-Presidents. The International President shall be the Chairman and the General Secretary-Treasurer shall be the Secretary of the Executive Council. Meetings shall be called by the Chairman from time to time as the affairs of the Association require consideration by the Council, and meetings must be called by him upon request from a majority of the officers composing the Council.

Powers.

SEC. 2. Between conventions all Executive and Judicial powers of the Grand Lodge shall be exercised by the

Executive Council, sessions of which shall have the same authority to initiate legislation as has a delegate convention of the Association, and which shall have the power to require reports from any officer or officers of the Grand Lodge or any district or local lodge, or to remove any such officer or officers for justifiable cause. In the event of a vacancy occurring in the office of the International President, the Executive Council shall appoint a member of this Association to act as temporary International President, but no such appointment shall be made for a longer period than is necessary to hold a special election under the provisions of the law governing our general elections.

Reports.

SEC. 3. During the month of January of each year the Executive Council shall prepare and mail to each local lodge a report of the affairs of the Grand Lodge for the next preceding calendar year. This report shall include the various decisions of the Executive Council and such other information as will advise the local lodges of the condition of the Grand Lodge.

Investment of Funds.

SEC. 4. The Executive Council shall have full control over all of the funds, deposits, investments and property of every kind, nature and description belonging to the Grand Lodge of The International Association of Machinists. All investments of the funds of the Grand Lodge made upon the order of the Executive Council shall be in the name of the Grand Lodge of The International Association of Machinists, so that no amounts can be withdrawn therefrom without the signatures of the International President, the General Secretary-Treasurer and one member of the Executive Council, upon an order to which the seal of the Grand Lodge is attached. The Executive Council may withdraw investments, negotiate loans upon securities belonging to the Grand Lodge of The International Association of Machinists, and sell such securities as the needs of the Grand Lodge may require; but no such withdrawals, sales, or transfers shall be negotiated without the authority of the Executive Council evidenced by the

signatures of the International President, the General Secretary-Treasurer and one member of the Executive Council, upon which the seal of the Grand Lodge is attached. The Executive Council shall have power to borrow from one fund to another in cases of great emergency, provided that provision is made in the resolution sanctioning the loan for its repayment.

The funds of the Grand Lodge of The International Association of Machinists shall be invested only in United States Government Bonds, United States Government Notes, State and Municipal Bonds, supported by the general income of the State or Municipalities, Bonds of the Government of the Dominion of Canada and other investments that would be approved by the Probate Court of the District of Columbia as suitable investment for guardian or trustee funds.

Duties of Vice-Presidents.

SEC. 5. When not in attendance in meetings of the Executive Council, the General Vice-Presidents shall act as General Organizers, performing such duties and in such localities as may be decided by the International President to be for the best interests of the Association, and shall report their activities through the Journal every three months.

Expenses and Recommendations.

SEC. 6. During each and every week the General Vice-Presidents shall file with the International President an itemized account and full report of their expenses, and activities as officers of the Grand Lodge.

Salary.

SEC. 7. For the faithful performance of their duties the General Vice-Presidents shall each receive an annual salary of $4,500, payable in 52 equal weekly installments.

ARTICLE V.

Duties of the General Secretary-Treasurer.

SECTION 1. The General Secretary-Treasurer shall be the secretary and keep correct records of all meetings of the Executive Council and of all conventions of the Grand Lodge of The International Association of Machinists. He shall cause the proceedings of all meetings of the Executive Council to be printed in pamphlet form and mail a copy thereof to each local lodge within fifteen days after the adjournment of such meetings. He shall conduct all correspondence in the name of the Grand Lodge, excepting correspondence dealing with the duties and responsibilities of the International President and the Editor, and be subject to the directions of the Executive Council. Whenever necessary he may visit any local or district lodge for the purpose of instructing the officers in the performance of their duties. He shall have the general supervision of the business of his office and, upon request, shall submit his books of account together with all papers, files, documents, etc., in his possession for the inspection of the Executive Council and the duly appointed Auditing Committee. He shall also codify and index the various articles and sections of the Constitution.

Receipt of Funds.

SEC. 2. The General Secretary-Treasurer shall receive all funds paid to the Grand Lodge from all sources and distribute same to the credit of the accounts for which they are intended. He shall keep a systematically arranged book account between the Grand Lodge and each local lodge, and a journal subscription list; he shall issue monthly, in pamphlet form, an itemized account of all receipts and expenditures, and a monthly review statement showing in detail all financial transactions between the Grand Lodge and local lodges; he shall upon request of any local lodge furnish a copy of the expense account of any paid representative of the Grand Lodge for the period specified by such local lodges, provided such request does not include a period prior to the next preceding Grand Lodge audit.

All receipts from investments made by the Grand Lodge shall be placed in an emergency fund and used for reinvestment under authority of the Executive Council.

Audit of Local and District Lodges.

SEC. 3. The General Secretary-Treasurer shall audit the books of any local or district lodge whenever in his opinion such an audit is advisable, and he shall from time to time appoint with the approval of the Executive Council such auditors as may be necessary to carry on this work.

Upon demand therefor by the General Secretary-Treasurer, the officers of any local or district lodge shall forthwith surrender and turn over to the General Secretary-Treasurer or to an auditor whom he may designate, all books, vouchers, bills, receipts and records of such local or district lodge. Any local or district lodge, or officer thereof, who refuses to comply with the provisions of this section shall be liable to suspension or expulsion by the Executive Council.

Deposit of Funds.

SEC. 4. All moneys received by the General Secretary-Treasurer shall be deposited daily by him in a bank of sound financial standing in the name of the Grand Lodge of The International Association of Machinists, which deposit shall be subject to withdrawal check signed by the General Secretary-Treasurer and countersigned by the International President. He shall invest, in conformity to the provision as contained in Article IV, Section 4, the accumulated funds of the Grand Lodge of The International Association of Machinists in excess of $100,000 as directed by the Executive Council.

Per Capita Tax For All Workers Whether Male or Female.

SEC. 5. The General Secretary-Treasurer shall collect per capita tax in proportion to the business transacted as shown by the regular monthly report of each local lodge, in accordance with the following rates which include subscription to the Machinists' Monthly Journal:

207

Monthly per capita tax for Journeymen and Specialists ---------- $1.00
Monthly per capita tax for Apprentices ---------- .50
Monthly per capita tax for Machinists Helpers and Production Workers ---------- .65
Initiation and Reinstatement Fees for Journeymen, Specialists, Machinists Helpers, Apprentices and Production Workers ---------- 1.50
Initiation and Reinstatement Fees on Grand Lodge Initiations and Reinstatements ---------- 7.50
Monthly Dues for Grand Lodge Affiliation ---------- 2.00
Unemployment Stamps ---------- .10

The General Secretary-Treasurer shall furnish a suitable due book at a cost to lodges of not more than ten (10) cents each, in which stamps may be affixed and cancelled. Such due books shall provide spaces for the entering therein of transfers, assessments and the designation of the amount of dues charged by each lodge, and for the registering of votes in Grand Lodge elections.

Upon receipt of per capita tax, accompanied by the report of any local lodge, the General Secretary-Treasurer shall furnish stamps as receipts, in proportion to the number of initiations, reinstatements and number of months' dues shown as paid. He shall also keep a record of all individuals affiliated with the Grand Lodge because they are working in localities where there is no local lodge.

Reports

SEC. 6. All decisions rendered by the International President or by the Executive Council, whether through correspondence or in regular session, shall be published in full by the General Secretary-Treasurer in the next monthly pamphlet containing itemized statement of receipts and expenditures provided for in Section 2 of this Article; and he shall perform such other duties as may be required of him by the laws, customs and usages and the Constitution of the Grand Lodge of The International Association of Machinists.

Assistant.

SEC. 7. The General Secretary-Treasurer shall appoint an assistant secretary, who must be a member in good

208

standing of a local lodge of The International Association of Machinists, and employ such other help as may be necessary to perform the work of his office, subject to the approval of the International President and the Executive Council.

Salary.

SEC. 8. For the faithful performance of his duties the General Secretary-Treasurer shall receive an annual salary of $6,500, payable in 52 equal weekly installments. He shall give a bond for the faithful performance of his duties in the sum of $100,000, to be approved by the Executive Council.

Duties of Assistant Secretary.

SEC. 9. The Assistant Secretary shall perform all duties assigned to him by the General Secretary-Treasurer, and in the absence of that official, shall have supervision of the office. For the faithful performance of his duties he shall receive a salary of $3,600 per year, payable in 52 equal weekly installments.

Bond of Assistant Secretary.

SEC. 10. The Assistant Secretary shall give bond for the faithful performance of his duties in such amount and with such surety as may be approved by the Executive Council.

Grand Lodge Auditors.

SEC. 11. Grand Lodge Auditors shall perform such services as may be required of them by the General Secretary-Treasurer, and shall receive a salary of $3,600 per year, payable in 52 weekly installments.

ARTICLE VI.

The Journal and Duties of the Editor.

Journal and Editor.

SECTION 1. The Grand Lodge of The International Association of Machinists shall publish a monthly maga-

zine to be known as the "Machinists' Monthly Journal," which shall be edited and published under the management and supervision of the Editor, with and under the advice of the Executive Council.

Subscriptions.

SEC. 2. Subscriptions to the Journal shall be at the rate of $1.00 per annum and shall be included and collected in the regular per capita tax. The Journal shall be mailed to the home address of each subscriber.

Journal Finance.

SEC. 3. All moneys received from subscriptions, advertising or other source in connection with the publication of the Journal shall be paid to the General Secretary-Treasurer, who shall hold the same as a separate fund of the Grand Lodge of The International Association of Machinists, and all bills chargeable against the Grand Lodge in connection with the publication of the Journal shall be paid from said special fund by warrant duly signed by the International President. All contracts for advertising in the Journal shall be made subject to the right of the Grand Lodge to cancel the same should the advertiser become involved in any dispute with organized labor.

Journal Contents.

SEC. 4. The Machinists' Monthly Journal shall contain the roster of the Grand Lodge of The International Association of Machinists, and shall be devoted to the interests of the members of the machinist craft and the advancement of the principles of organized labor. To this end the Editor shall become informed upon current legislative enactments, judicial decisions, labor statistics, etc., of interest to and affecting the labor movement, and from time to time shall publish the same in the Journal for the information of the members of local lodges. The Editor, subject to the supervision of the Executive Council, shall decide upon all matters for publication in the Journal, except that no matters that are sectarian in religion or partisan in politics shall be published therein. The

rejection of any matter submitted by a local lodge under seal for publication in the Journal shall be accompanied by a letter from the Editor giving such local lodge a full statement of the reasons therefor.

Salary

SEC. 5. For the faithful performance of his duties, the Editor shall receive an annual salary of $4,500, to be paid in 52 equal weekly installments.

ARTICLE VII.

Auditing Committee.

SECTION 1. Semi-annually the local lodges within a radius of 10 miles of Grand Lodge headquarters shall elect an Auditing Committee of three members. This auditing committee shall employ an expert accountant and proceed in the third week in January and July of each year to examine and make a complete audit of the books and accounts of the Grand Lodge of The International Association of Machinists, covering the six months period ending June 30th and December 31st. A full report, including a statement of all assets and liabilities of the Grand Lodge, shall be published over the signatures of and verified under oath by the individual members of said auditing committee and the expert accountant who assisted them. Each member of the auditing committee shall receive the maximum rate of pay for Journeymen Machinists in the District of Columbia for the time actually engaged in the performance of his duties, and the expert accountant shall have such compensation as is agreed upon by a majority of the members of the auditing committee and said accountant, all of which expenses shall be paid by the Grand Lodge.

ARTICLE VIII.

Grand Lodge Representatives.

SECTION 1. All Grand Lodge Representatives appointed by the International President under authority of Section 2 of Article III of this Constitution shall be members of a

local lodge and in continuous good standing for at least five years immediately prior to their appointment, free from delinquencies of any nature to the Grand Lodge or to any district or local lodge of The International Association of Machinists. For the faithful performance of their duties, Grand Lodge Representatives shall receive an annual salary of $3,600, payable in 52 equal weekly installments.

ARTICLE IX.

Conventions.

Method of Calling Conventions.

SECTION 1. On the third Monday of September in the year 1932, and every four years thereafter, a Grand Lodge Convention of the Association shall be held in a city to be selected by the General Executive Council. Notice of such conventions shall be issued to all local lodges by the General Secretary-Treasurer not later than the 1st of May in each convention year. In case of an emergency the Executive Council may, upon its own initiative, or after having received the endorsement under seal of at least twenty (20) per cent of all local lodges, not more than fifteen (15) of which are located in any one state, province or territory, submit a call for a special convention, and thereupon the General Secretary-Treasurer shall prepare a ballot and submit the same though the referendum calling for a special convention of the Grand Lodge to convene at such date as seems best to meet the emergency. In the event that a majority of those voting, vote in favor of holding a special convention, the Executive Council shall, as soon as practicable thereafter, select the city in which said special convention shall be held.

Representation and Vote.

SEC. 2. Each local lodge is entitled to be represented in all conventions of the Grand Lodge by one delegate, and in addition thereto each local lodge having a membership of more than 200 is entitled to an additional delegate for each additional 200 members or major fraction thereof.

Each local lodge represented in convention by a delegate is entitled to one vote, and all local lodges having a membership of more than 100 are entitled to one additional vote for each additional 100 members or majority fraction thereof.

The number of votes each local lodge is entitled to shall be computed upon the number of members of such local lodge in good standing at the close of the month of July of the convention year. The delegation of any local lodge may by unanimous consent cast the vote to which said lodge is entitled as a unit, or the vote to which said lodge is entitled may be divided equally among its delegates, and in case an equal division is impossible the fractional number of votes left after the division shall be cast by the first delegate elected by said lodge. If, however, not more than three local lodges, within a radius of 150 miles of each other, and each having less than one hundred members, so desire, they may combine to send one delegate to represent them at Grand Lodge Convention. Such delegate must be elected by a majority vote in each of the lodges so combining and the voting power of such combined lodges shall be based upon their combined membership exactly as if it were one lodge.

Election of Delegates.

SEC. 3. At a summoned meeting of each local lodge, in the month of June of convention years, an election of delegates and alternate delegates shall be held by all local lodges, and the secretary of each local lodge shall immediately thereafter forward to the General Secretary-Treasurer a report of the election, giving the names, card numbers and residence address of all delegates and alternate delegates, which report shall be made upon blank forms furnished therefor by the General Secretary-Treasurer.

Local lodges organized and affiliated with the Grand Lodge in the month of June of a convention year may elect delegates and alternate delegates during the month of July. Local lodges organized and affiliated after July 1st of any convention year are not entitled to representation in the convention.

The General Secretary-Treasurer shall prepare and forward a complete list of all duly elected delegates and alternate delegates with their respective addresses to all local lodges on or before the 15th day of August preceding the convention.

Should any delegate or alternate delegate be unable to serve as such, the local lodge may elect his successor at any meeting prior to the convening of the convention, and the secretary of such local lodge shall forthwith notify the General Secretary-Treasurer of the change.

Whenever a special convention of the Grand Lodge has been called by a vote submitted through the referendum, the General Secretary-Treasurer shall rearrange the dates for the election of delegates, etc., in strict accordance with the provisions of this Article, to meet the emergency necessitating the holding of the convention.

Qualifications of Delegates.

SEC. 4. Every delegate to conventions of the Grand Lodge must be a member in good standing of the local lodge from which he holds credentials for at least six months prior to his election, free from delinquencies of any nature to the Grand Lodge or to any district or local lodge, and at the time of his election and for six months prior thereto working at the trade. This qualification shall not be required of or apply to any salaried employee whose time is fully occupied by the Grand Lodge or any district or local lodge of The International Association of Machinists, or by the American Federation of Labor, nor to individuals who have been unable to obtain employment at the machinist trade because of a strike, lockout, discrimination or temporary physical disability, or to members who are retired on pension and are paying full membership dues.

No local lodge shall be entitled to representation in any convention of the Grand Lodge unless such local lodge was in good standing, free of delinquency of any nature to the Grand Lodge at the close of the month of June of the convention year.

Grand Lodge Officers Not Eligible.

SEC. 5. No Grand Lodge Officer shall serve as a delegate to any convention of the Grand Lodge while receiving compensation from the Grand Lodge.

Delegates' Expenses.

SEC. 6. The transportation of one delegate from each local lodge in continuous good standing with the Grand Lodge for six months prior to the convening of the convention and who is accepted and seated in the convention as a delegate, shall be paid by the Grand Lodge upon presentation of the bill of the local lodge, an amount equal to the current round trip railroad fare between the place in which the local lodge is located and the place where the convention is held. Lodges whose delegates travel on passes, shall be entitled to round trip transportation for one delegate, from the place where the lodge is located, to the place where the convention is held, upon presentation of the bill of the local lodge therefor.

Credentials Committee.

SEC. 7. The Executive Council shall act as the committee on credentials at all conventions of the Grand Lodge and shall meet within four days next preceding the convening of the convention to consider all matters affecting the qualifications of delegates, including the financial standing of local lodges with the Grand Lodge, and shall thereafter report its finding and recommendations to the convention.

Resolutions Committee.

SEC. 8. At least fifteen (15) days before the convening of any convention of the Grand Lodge, the International President shall appoint five (5) duly elected and qualified delegates to such convention as a resolutions committee. The five delegates so appointed shall meet in the convention city three (3) days prior to the convening of the convention for the purpose of considering such resolutions as may properly come before the convention, and shall report their findings and recommendations to the convention as early as the business of the convention will permit.

For the faithful performance of their duties each member of the resolutions committee shall receive eight dollars ($8) per day together with actual and necessary hotel expenses, for the three days prior to the convening of the convention and after arrival at the convention city.

Committees.

SEC. 9. The International President shall appoint a committee on rules for each convention of the Grand Lodge. All committees necessary for conducting the business of the convention, not otherwise provided for, may be appointed by the International President and Executive Council, subject to the approval of the convention.

Parliamentary Laws.

SEC. 10. Roberts' Rules of Order shall be the parliamentary law of this Grand Lodge and shall apply to all parliamentary procedure of the Grand Lodge, except in cases otherwise provided for by this Constitution.

ARTICLE X.

Revenues of the Grand Lodge.

SECTION 1. The revenue of the Grand Lodge of The International Association of Machinists shall be derived from the sale of supplies, collection of per capita tax, initiation fees, reinstatement fees, the income from the publication of the Machinists' Journal, interest on investments and such special assessments as may be levied from time to time.

Assessments.

SEC. 2. Whenever in the opinion of the Executive Council additional funds over and above the regular income are necessary to carry on the work of the Grand Lodge, the General Secretary-Treasurer shall prepare a ballot and submit the same through the referendum calling for the assessment recommended by the Executive Council. If a majority of those voting, vote in favor of the assessment,

then the same shall thereupon become and be a lawful charge against the individual members of all local lodges.

All moneys received on a Grand Lodge assessment shall be used only for the purpose specified on the ballot calling for the same, except it be approved by a two-thirds vote on a general referendum.

Assessment Rates.

SEC. 3. In the event of an assessment being levied by the Grand Lodge, apprentices shall be required to pay only one-half (½), and machinists helpers and production workers shall be required to pay only sixty-five per cent (65%) of the assessment levied upon journeymen machinists.

ARTICLE XI.

Benefits.

Strike and Lockout Donations.

SECTION 1. Members of local lodges who have been in continuous good standing for at least six months and who have ceased work on account of a grievance theretofore approved by the Executive Council, or who have been victimized and have satisfied the Executive Council that by reason of this discrimination they are unable to secure employment, shall receive such donations from the Grand Lodge as may be determined by the International President and Executive Council according to the amount of funds available for such purposes.

No donations shall be paid unless the strike or victimization extends over a period of more than two weeks, thereafter donations shall be paid in the amount determined upon by the International President and Executive Council.

Members of local lodges on strike or victimized, but not at the time entitled to donations because lacking the six months' membership required herein, shall be entitled to receive donations from the Grand Lodge, as may be determined by the International President and Executive Council, as soon as they have been in good standing membership for the six months' period required herein.

The payment of donations provided for in this section may be denied or terminated at any time by the International President and Executive Council when, in their opinion, the funds of Grand Lodge do not warrant the expenditure.

Any donations paid by Grand Lodge shall be divided or apportioned to members on strike or who may be victimized in the same ratio as per capita tax is paid upon said members.

Deduction for Arrearages.

SEC. 2. Whenever a member of a local lodge claiming strike or victimized donations is in arrears for dues or assessments, the General Secretary-Treasurer may deduct from such donations an amount sufficient to pay all such arrearages.

Method of Payment.

SEC. 3. Whenever a strike has been ordered or approved by the Grand Lodge each local lodge member affected thereby shall sign the strike record semi-weekly. From the names appearing on the strike record the secretary of the local lodge shall make up a weekly roll showing the names of the individuals on strike or who may be victimized.

After the weekly roll has been approved by the signatures of the president, financial secretary and recording secretary of the local lodge it shall be forwarded to the General Secretary-Treasurer, who, after examination thereof, shall return the same, together with a check of the Grand Lodge covering the amount of any donation made to such roll, which check shall be drawn payable to the president, financial secretary and recording secretary of the local lodge.

Each individual receiving a donation from the Grand Lodge must receipt for the same upon the duplicate roll provided, after which the secretary shall return one copy of said roll to the General Secretary-Treasurer for the files of the Grand Lodge, and place one copy on local lodge files. Except in cases where the distance and time required for the transportation of the mails makes the rule imprac-

ticable, the General Secretary-Treasurer shall not forward a check covering a subsequent donation before the receipted roll for the previous week has been received by him. No claim for any donations under the provisions of this section shall be considered or allowed unless presented to the General Secretary-Treasurer within thirty days from the date on which said donations were due.

No donations shall be paid to any individual who refuses to do the duty assigned to him by those in charge of the strike.

Death Benefits.

SEC. 4. Upon receipt of proof of the death of a member of any local lodge, duly attested by the signatures of the president and financial secretary of said lodge on blanks furnished for that purpose by the General Secretary-Treasurer, to which the seal of the local lodge is affixed, the Grand Lodge shall pay the death benefits based upon the rate of per capita tax paid upon the designated member and the period of his continuous good standing membership in a local lodge or local lodges at the time of his demise.

(a) The death benefit for all members in good standing prior to March 31, 1937 of local lodges upon whose membership the full rate of one ($1) dollar per month per capita has been paid to the Grand Lodge shall be paid upon their period of continuous good standing membership as follows: Three (3) years, fifty ($50) dollars; four (4) years, seventy-five ($75) dollars; five (5) years, one hundred ($100) dollars; six (6) years, one hundred and twenty-five ($125) dollars; seven (7) years, one hundred and fifty ($150) dollars; eight (8) years, one hundred and seventy-five ($175) dollars; nine (9) years, two hundred ($200) dollars; ten (10) years, two hundred and twenty-five ($225) dollars; eleven (11) years, two hundred and fifty ($250) dollars; twelve (12) years, two hundred and seventy-five ($275) dollars; thirteen (13) years, three hundred ($300) dollars.

The provisions of this section do not change, in any way, the accrued death benefit to which members were entitled under the constitution as in effect in 1928; but it does operate to extend the time before any increase in such benefits will accrue to members of less than ten years standing.

(b) The death benefit for all members initiated or reinstated after April 1, 1937 upon whose membership the full rate of one ($1) dollar per month per capita has been paid to the Grand Lodge shall be paid upon their period of continuous good standing membership as follows: Three (3) years, fifty ($50) dollars; five (5) years, seventy-five ($75) dollars; seven (7) years, one hundred ($100) dollars; nine (9) years, one hundred and twenty-five ($125) dollars; eleven (11) years, one hundred and fifty ($150) dollars; thirteen (13) years, one hundred and seventy-five ($175) dollars; fifteen (15) years, two hundred ($200) dollars; seventeen years, two hundred and twenty-five ($225) dollars; eighteen (18) years, two hundred and fifty ($250) dollars; nineteen (19) years, two hundred and seventy-five ($275) dollars; twenty (20) years, three hundred ($300) dollars.

(c) The death benefit for apprentices upon whose membership only one-half (½) of the full rate of per capita tax has been paid to the Grand Lodge shall be only one-half (½) of the respective amounts set forth under subdivisions (a) and (b) of this section.

(d) The death benefit for all machinist helpers and production workers upon whose membership only sixty-five (65) cents per month per capita tax has been paid to the Grand Lodge shall be sixty-five per cent (65%) of the respective amounts set forth under subdivisions (a) and (b) of this section.

No death benefits shall be paid upon the death of any member who was fifty (50) years of age, or over, at the date of his initiation, or at the date of his last reinstatement as a member of a local lodge of The International Association of Machinists. (This provision does not apply to a person who was initiated, or reinstated in a local lodge prior to January 1st, 1917, and who has remained in continuous good standing to the date of his death.)

The term "continuous good standing" as used in this Article designates members of local lodges who are credited and reported to the Grand Lodge as receiving regular monthly due stamps. Members receiving unemployment stamps provided for in Article XII of this Constitution are not entitled to accumulated benefits covering the months for which said unemployment stamps are accepted.

Exemption Cards.

SEC. 5. Any member of a local lodge who has been in continuous good standing for thirty (30) years and has become so afflicted or disabled as to prevent him from actively performing the duties of a machinist, or who has been discriminated against for his activities as an organizer, Business Agent, or other official work, and is in consequence unable to obtain employment; or any member who has been continuously in good standing for thirty (30) years and has reached the age of sixty-five (65) years, shall upon leaving the trade and upon request therefore be granted a card exempting him from further payment of dues and assessments. The issuing of such an exemption card shall not deprive the member of the death benefits provided for in this article. No Certificate of Death and Disability Benefits shall be granted to a member carrying an exemption card.

Death Benefits—To Whom Paid.

SEC. 6. All death benefits payable under the provisions of Section 4 of this Article shall be paid to the next of kin of the deceased, in the following order:

(a) To the wife or husband of the deceased.
(b) To the child or children of the deceased.
(c) To the parent or parents of the deceased.
(d) To the brothers and sisters of the deceased.

In any case where a dispute arises as to who is entitled to the benefits herein provided for, the payment thereof to the administrator, executor, or any relative of the deceased, shall fully release the Grand Lodge of its obligations hereunder.

Absence of Relatives.

SEC. 7. When a member of a local lodge dies, whose burial is not otherwise provided for, the local lodge of which he was a member at the time of his demise, or any local lodge in the locality where he dies, may arrange for his funeral or interment, which local lodge shall thereafter be reimbursed by the Grand Lodge for all reasonable expenses up to the amount of the death benefits of the

221

deceased. The remainder of such death benefits, if any, shall be held by the Grand Lodge subject to any legal claim therefor.

Membership Cancelled.

SEC. 8. Delinquency for three (3) months in the payment of dues or assessments shall automatically cancel membership in a local lodge of this Association and all rights, privileges and benefits incident thereto. The period of good standing membership of any person whose membership has been cancelled for delinquency, or other cause shall date from the date of his last reinstatement in a local lodge, as shown by the Grand Lodge records, and his rights, privileges and benefits under the provisions of this Constitution shall attach and date from the date of his last reinstatement, as though he had never before held membership in a local lodge of this Association.

Sick Benefits.

SEC. 9. No sick benefits are paid by the Grand Lodge, but any local lodge of The International Association of Machinists may provide in its by-laws for the payment of sick benefits to its members, subject, however, to the approval of the provisions therefor by the International President.

ARTICLE XII.

Unemployment Stamps.

SECTION 1. Any member of a local lodge who without fault on his part is unemployed for the major portion of any month is entitled to an unemployment stamp for that month and thereby excused from the payment of the regular monthly dues upon complying with the following provisions in relation thereto:

(a) He shall register his name and address in the out-of-work book each week during the period of his unemployment, or in case of disability he shall communicate the fact to the financial secretary or business agent of the local lodge of which he is a member.

(b) His monthly dues and assessments must be paid within the three months limit as provided for in Section 8 of Article XI.

(c) He shall make application for the unemployed stamp before the expiration of three months from the month during which his last monthly dues were paid.

(d) The financial secretary shall place the unemployed stamp in the square of the month next following that of the month in which the last due stamp was placed.

Conditions of Issue.

SEC. 2. Unemployment stamps shall not be issued to members of local lodges who are on vacation or engaged in any business or profession outside of the machine industry. Not more than six unemployment stamps shall be issued to any member of a local lodge during any consecutive twelve-month period unless the consent of the Executive Council has been first obtained therefor. Any member of a local lodge who has been retired from active employment at the trade by his employer on pension may secure unemployment stamps by paying the amount charged therefor by the Grand Lodge to the local lodge of which he is a member. Members who have received unemployment stamps shall report to the financial secretary or business agent of the local lodge immediately upon again securing employment. Unemployment stamps are issued for the purpose of aiding members of local lodges to maintain their good standing in their respective lodges but shall not increase the liability of the Grand Lodge for accumulated death benefits for the months covering which unemployment stamps have been accepted.

Strike Stamps.

SEC. 3. Any member who has ceased work on account of a grievance theretofore approved by the Executive Council is entitled to receive strike stamps covering the period during which he is without employment by reason therefor, free of cost, upon complying with the provisions of Section 1 of this Article and conforming to such other requirements as may be instituted for the good and welfare of those involved by the local lodge of which he is a member.

Violations.

SEC. 4. Any member who violates any of the provisions of this Article or who obtains an unemployment stamp or strike stamp by any false pretense or misrepresentation of the facts, shall be subject to such fines and penalties as may be decided upon by the local lodge of which he is a member.

ARTICLE XIII.

Strikes.

SECTION 1. In case of extreme emergency, such as a reduction in wages, or an increase in the hours of labor, where delay would seriously jeopardize the welfare of those involved, the International President may authorize a strike pending the submission to and securing the approval of the Executive Council. In all other cases the grievances must be submitted to the Executive Council and its approval therefor obtained before any strike may be declared by any local lodge or the members thereof; and any local lodge or members thereof failing to comply with the provisions of this Article shall forfeit all rights to strike donations or to other financial aid from the Grand Lodge during the entire period of the controversy.

Method of Declaring Strike.

SEC. 2. Whenever any difficulty arises within the jurisdiction of any local lodge between its members and any employer or employees growing out of a reduction in wages, lengthening hours of labor, or other grievances incident to the condition of employment, or whenever any local lodge desires to secure for its members an increase in wages, a shorter work day, or other change in the conditions of employment, the local lodge having the greatest number of members involved shall call a meeting of all members directly affected to decide by secret ballot whether the proposed changes shall be accepted or rejected. A majority vote of those present and voting on the question shall decide. If as a result of this decision a strike vote is decided upon, it shall require a three-fourths vote, by secret ballot, of those in attendance and qualified to vote thereon, to declare a strike. Only individuals who have been mem-

bers of a local lodge for more than six months shall be entitled to vote on the question of declaring a strike. If it is decided to reject the proposed reduction of wages, increased hours of labor, or other changes in the condition of employment, or if it is decided to demand an increase in wages, a shorter work day, or other change in the conditions of employment, the decision shall be submitted, either in writing or through a committee, or the business agent, to the employer, or employers and if the employees involved are unable to reach an agreement, the recording secretary of the local lodge shall prepare a full statement and history of the matters in controversy and forward the same to the International President, who shall thereupon in person or by deputy visit the local lodge where the controvery exists, and, with a member of the local lodge whose members are involved, investigate the controversy and if possible effect a settlement. Upon receipt of the statement and history of the matters in controversy from the recording secretary of the local lodge the International President shall prepare and forward a copy thereof to each member of the Executive Council, together with a request for their vote on the question of approving a strike of those involved to enforce their decision in relation thereto. Upon receipt of the vote of the members of the Executive Council the International President shall forthwith notify the local lodge of the decision of the Executive Council. No strike shall be declared by any local lodge or the members thereof without first obtaining the consent of the International President or the Executive Council therefor.

Discontinuance of Grievance.

SEC. 3. Should any local lodge fail to receive the sanction of the Executive Council it shall hold a meeting and declare the grievance at an end. Continuing such grievance after failure to secure the sanction of the Executive Council shall be considered sufficient cause for the suspension of any local lodge and the members thereof from all rights and privileges, at the option of the Executive Council.

Declaring Off a Strike.

SEC. 4. Any proposal to settle or declare off an existing strike must be presented at a regular or called meeting of a local lodge and decided by the majority vote, by secret ballot, of the members involved therein. Wherever the Executive Council decides that it is unwise to longer continue an existing strike, it may order all members of local lodges who have ceased work in connection therewith to resume work, and thereupon and thereafter all strike donations shall cease, except that the International President, with the consent of the Executive Council, may continue the relief in special deserving cases.

Financing Strikes.

SEC. 5. The Executive Council may draw upon the funds of the Grand Lodge to finance any strike or lockout.

Handling Unfair Work.

SEC. 6. Whenever members of a local lodge have ceased work on account of a grievance theretofore approved by the Executive Council, and the employer is having work done in other places of employment, whether owned or controlled by such employer or not, members of local lodges employed in such other places of employment may be ordered by the local lodge or by the district lodge, if one exists in that locality, to cease doing such work or to cease working at such places. All such orders must be approved by the Executive Council to entitle members complying therewith to strike donations or victimized donations, as the case may be. In the event of the members of the local lodge not taking action to cease work as herein described, the International President, with the approval of the Executive Council, may order said members to cease work until the dispute is satisfactorily adjusted, or until ordered to return to work by the International President and the Executive Council.

ARTICLE XIV.

District Lodges.

SECTION 1. District lodges shall be established upon railroads, in industries where mutual shop interests require it, and in localities where two or more local lodges exist, for the purpose of securing mutual protection, harmonious action, and close co-operation in all matters relating to the machinist craft.

A district lodge is a delegate body made up of representatives duly elected from the local lodges within the railroad system, industry, or locality in which the district lodge is established.

All elective officers of Railroad District Lodges shall be elected by a referendum vote of the entire membership of such districts.

Jurisdiction.

SEC. 2. The jurisdiction of all district lodges shall be determined and defined by the Executive Council.

Each local lodge within such jurisdiction shall become affiliated with the district lodge unless specially exempted by said district lodge upon the approval of the International President and the Executive Council.

Representation and Revenue.

SEC. 3. Each district lodge shall determine the proportion and method of representation therein of local lodges within its jurisdiction, and the revenues to be collected from said local lodges to maintain and carry on the work of the district lodge. All such revenues shall be collected by the financial secretaries of the local lodges and forwarded to the district lodge officers authorized to receive the same. All officers of the district lodges having to do with the finances of the organization shall be bonded in the bonding and fidelity department of the Grand Lodge.

District lodges collecting revenue or receiving financial assistance shall render quarterly statements of receipts and disbursements to each local lodge within its jurisdiction and at the close of each three months' period shall

forward to the International President a complete report on forms provided by him for that purpose.

Authority.

SEC. 4. District lodges shall have authority over and control of all local lodges within their jurisdiction, subject to the approval, however, of the Grand Lodge. The by-laws of all district lodges, and the proposed amendments thereto, shall be submitted to the International President for his examination, correction, and approval before final adoption. The provisions of this Constitution relating to local lodges and the constitution of local lodges of The International Association of Machinists shall, in so far as they are practical and adaptable, apply to and control all district lodges of The International Association of Machinists.

District Lodge Assessments.

SEC. 5. In case of emergency district lodges may levy assessments upon all members of affiliated local lodges within their respective jurisdiction.

Assessments shall not be levied, however, until the same are approved by a two-thirds vote of all the members in the district in attendance and voting at a summoned meeting of their respective local lodges affiliated with the district, of which meetings, notice has been served to members in writing, by mail, or otherwise, at least seven (7) days before date of meeting. In case the vote for assessment is carried by a two-thirds vote and date set for collection, the same shall thereupon become a lawful charge and all members of local lodges affiliated with the district are liable for the assessments, and the same shall be collected as per Article "I," Section 2, of the Grand Lodge Constitution governing assessments of local lodges of The International Association of Machinists. Suitable plans should be arranged by the district lodge, whereby the local lodges and individual members are provided with proper receipts for assessments paid.

ARTICLE XV.

Business Agents.

SECTION 1. The Grand Lodge shall establish and maintain business agencies upon railroads, in industries and localities whenever the establishment and maintenance of the same is approved and authorized by the Executive Council; the Grand Lodge shall pay such part of the expense of business agencies as may be approved by the International President and Executive Council.

Control of Business Agents.

SEC. 2. The International President, with the approval of the Executive Council, shall discontinue the financial support of the Grand Lodge in any case where, in his or its opinion, the conduct or results obtained by any business agent or agency are unsatisfactory. All business agents, whether they are or are not receiving financial assistance from the Grand Lodge, are under the supervision and subject to the orders of the International President and may be deputized by him to act as representatives of the Grand Lodge within or without their respective districts or localities.

Qualifications.

SEC. 3. No member shall be permitted to serve as business agent unless he has been in continuous good standing for at least two years prior to his election and free from delinquencies of any nature to the Grand Lodge or any district or local lodges of The International Association of Machinists. No business agent is eligible to any other office in the gift of any district or local lodge, excepting that of delegate to conventions.

Reports.

SEC. 4. On the last day of each week all business agents shall file with the International President a report of their activities, and on the first day of each month they shall file with the International President a statement of their ex-

penses. Such expense statements shall be endorsed as approved by the district or local lodge, evidenced by the signatures of the president and secretary thereof.

Location of Activities.

SEC. 5. The work of all business agents shall be confined to the railroad, industry, or locality for which they are respectively elected, unless otherwise ordered by the International President or the Executive Council. While on special service, business agents shall be paid their actual expenses for railroad fare and hotel. The term of office of business agents shall be provided for in the by-laws of the district or local lodge.

ARTICLE XVI.

Bonding Department.

SECTION 1. The Executive Council shall establish and maintain a bonding and fidelity department, to be under the immediate supervision of the General Secretary-Treasurer, to be the surety on all bonds furnished by and for the financial officers of all district and local lodges.

The General Secretary-Treasurer shall, upon approval thereof by the International President and the Executive Council, issue a semi-annual report of the business transacted by the bonding and fidelity department and all of the books of such department shall be examined and made a part of the semi-annual Grand Lodge audit. The expenses incident to the maintenance of such department shall be paid from the income derived from the business transacted by the department.

Each district and local lodge shall obtain a bond for each of its financial officers through the General Secretary-Treasurer, with the bonding and fidelity department of the Grand Lodge as surety thereon and application therefor shall be made to the General Secretary-Treasurer upon blank forms furnished by him for that purpose.

All such bonds shall run for the period of one year and shall be transferable without additional costs to any successor or successors filling the office for which the bond is given during the period for which the bond is written. No

such bond shall be for less than $500 liability, and the premium charged thereon shall not be in excess of $2.50 per year for the first $500 and 50 cents per year for each additional $100 of liability of the surety thereunder.

Whenever any financial office in the district or local lodge becomes vacant by reason of resignation, death, or removal of any such officer, the books of the office shall be audited as soon as practicable by the trustees or auditors of such district or local lodge, and the recording secretary thereof shall immediately notify the General Secretary-Treasurer of the vacancy. Upon receipt of such notice the General Secretary-Treasurer shall forward an application blank to the recording secretary of the district or local lodge, and immediately after the election of an officer to fill the vacancy an application for the transfer of the bond for the unexpired term shall be forwarded to the General Secretary-Treasurer.

ARTICLE XVII.

Hold No Other Office.

SECTION 1. No officer of the Grand Lodge or of any district or local lodge who is expected to devote his entire time to the duties of his office, shall accept any office or other position from any other organization or institution unless it is such as will advance the common interests of the working classes, nor shall any member of any local lodge hold membership in the National Civic Federation.

Officers' Expenses.

SEC. 2. All Grand Lodge officers, Delegates to the American Federation of Labor, Delegates to the Trades and Labor Congress of Canada, Members of the Law Committee, Grand Lodge Representatives and Grand Lodge Auditors shall be allowed actual and necessary transportation and hotel expenses when away from home on official business, subject to the approval of the International President and the Executive Council.

SEC. 3. The International President, one Vice-President, the General Secretary-Treasurer and the Editor of the Journal shall have Washington, D. C., designated as their

headquarters and no hotel expenses shall be allowed while they are at headquarters, except when first elected or temporarily assigned there and then hotel expenses shall be allowed for a period not to exceed sixty days.

Vice Presidents.

SEC. 4. All other International Vice Presidents shall be assigned to a home headquarters and no hotel expenses shall be allowed when stationed at such designated headquarters.

ARTICLE XVIII.

The Referendum and Its Operation.

Definition.

SECTION 1. Wherever in this Constitution and in the constitution for local lodges reference is made to the "referendum," it is intended thereby to refer to the practice of submitting matters to a vote of the membership at large through the respective local lodges organized and chartered by and in good standing with the Grand Lodge of The International Association of Machinists.

How Invoked.

SEC. 2. Any member or members of a local lodge in good standing with the Grand Lodge of The International Association of Machinists, shall have the privilege of proposing amendments to the Constitution, submitting any grievance that may arise, and proposing appeals from the decisions of the Executive Council, by submitting same to the General Secretary-Treasurer after having first received endorsements thereto under the seal of not less than ten (10%) per cent of all local lodges in good standing, not more than ten of which are located in any one state, province or territory.

(The word "amendment" wherever used in the Constitution shall be taken to mean any addition to, changes, or cancellations of the Constitution of the Grand Lodge and the constitution of local lodges.)

Form of Amendments.

SEC. 3. All proposed amendments to this Constitution shall be in such form as to state the substance rather than the exact language of the proposed addition, cancellation or change, that is, the purpose to be accomplished rather than the wording or the designation of certain articles or sections, and the General Secretary-Treasurer shall submit the same as provided in the next succeeding section with a clause attached thereto authorizing the necessary changes in the Constitution.

SEC. 4. Upon receipt of any such amendment, grievance or appeal, together with the endorsements thereof as required under Section 2 of this Article, the General Secretary-Treasurer shall cause the same to printed in the form of a circular arranged in such a manner as shall allow each subject to be decided, to be voted upon separately and forwarded to the respective local lodges in sufficient numbers, so that each member in good standing in such local lodge shall have a copy at the first meeting of his lodge held in the month of January of each year following the receipt of the same, except in years when conventions are held under the provisions of Article IX of this Constitution.

Publication of Amendments.

SEC. 5. All proposed amendments to the Constitution of the Grand Lodge and local lodges of The International Association of Machinists must be published in the Journal for two months prior to submission through the referendum as provided in Section 4 hereof. In order to enable the General Secretary-Treasurer to comply with the law a period of forty-five (45) days from date of issue of the proposed amendments shall be allowed to secure endorsements. All endorsements received after that period will be discarded.

Method of Voting and Returns.

SEC. 6. Whenever a referendum vote is called by the General Secretary-Treasurer, each local lodge shall notify its members of the vote being called, and no ballot shall be accepted unless deposited between the dates of January 1

and 31 of each year, according to the call. Within 72 hours after the casting of the ballots the result of the vote shall be forwarded to the General Secretary-Treasurer on an official tally sheet therefor furnished by him and accompanied by all of the ballots cast by the members of the local lodge.

The perforated register slip containing the name, address, card number and local lodge number of the individual voter shall be retained by the local lodge for at least sixty days after the date of the election.

Fines for Neglect.

SEC. 7. For failure to carry out the duties imposed upon him by the foregoing sections the General Secretary-Treasurer shall be fined not less than $25 nor more than $50, the amount to be determined by the Executive Council. The secretary of any local lodge who fails to carry out the duties imposed upon him by the foregoing section shall be fined not less than $2.00 or more than $5.00, the amount to be determined by his local lodge. The local lodge to which the secretary belongs shall collect and retain one-half (½) of the fine and forward the balance thereof to the General Secretary-Treasurer.

Publication of Votes and Amendments.

SEC. 8. The General Secretary-Treasurer, upon receipt of the vote upon any proposed amendment, shall furnish a copy of the same, including the vote of each local lodge, to the Editor who shall publish the same in the next issue of the Journal. All amendments so adopted shall be published monthly thereafter until the Constitution is revised and reprinted.

Special Meeting of Law Committee.

SEC. 9. When considered necessary the International President and the Executive Council may call a meeting of the Committee on Law to meet during the month of March for the purpose of incorporating into the Constitution such changes as have been made therein by the submission of amendments through the referendum.

When in Effect.

SEC. 10. Amendments so adopted shall become operative and in force upon the first day of the quarter succeeding the publication of the vote, and no amendments shall be submitted which provide that the same shall be immediately effective and in force.

There shall not be initiated a proposal for revision or cancellation of an adopted Amendment to this Constitution until after such adopted Amendment has been in effect for one year.

Re-Submission.

SEC. 11. Any amendment which failed to receive the majority of votes shall not again be submitted through the referendum until twelve months have elapsed and then only after again complying with the provisions of this Article in relation to the submission of amendments.

Changes in Salaries and Per Capita Tax.

SEC. 12. All changes in the salaries of Grand Lodge officers and the amount of per capita tax to the Grand Lodge must be submitted to the membership of the local lodges through the referendum for adoption.

ARTICLE XIX.

Delegates to the American Federation of Labor and Other National or International Affiliations.

International President First Delegate.

SECTION 1. The International President, by virtue of his office, shall attend all conventions of affiliated bodies as a regular delegate and act as chairman of the delegation.

Division of Votes.

SEC. 2. The number of votes to which the Grand Lodge of The International Association of Machinists is entitled shall be equally divided among its delegates.

Salary.

SEC. 3. Delegates to conventions of affiliated bodies shall receive $10.00 per day as compensation for time spent in attending such conventions.

ARTICLE XX.

Individual Affiliations.

SECTION 1. Any officer or representative of the Grand Lodge may receive the application of any machinist who is working in a locality where there is no local lodge of The International Association of Machinists for affiliation with the Grand Lodge. The applicant shall be obligated by the officer or Grand Lodge Representative who receives the application, and the application, together with an initiation fee of seven dollars and fifty cents ($7.50) shall be forwarded to the General Secretary-Treasurer, who, upon the receipt thereof, shall enter the applicant's name upon the record of Individual Affiliations of the Grand Lodge and issue a due book to the machinist so affiliated. All such individuals affiliated shall pay two dollars ($2) per month dues directly to the Grand Lodge by forwarding the same to the General Secretary-Treasurer.

SEC. 2. All of the provisions of this Constitution and of the constitution for local lodges shall, in so far as they are applicable, apply to and be binding upon all such affiliated members.

Provisions for Constitution for Local Lodges.

SEC. 3. The Grand Lodge shall provide a constitution for the government and control of local lodges, and all local lodges organized and affiliated in the Grand Lodge of The International Association of Machinists shall be governed and controlled thereby. The constitution for local lodges may be amended in the same manner as provided herein for the amendment of the Grand Lodge Constitution and by no other method whatsoever.

By-Laws.

SEC. 4. Each local lodge may adopt its own by-laws, provided that nothing is contained therein which is contrary to the provisions of the Grand Lodge Constitution or the constitution for local lodges. The proposed by-laws of all local lodges, and any amendments thereafter proposed, shall be submitted to the International President for examination, correction, and approval before adoption.

ARTICLE XXI.

Improper Conduct.

SECTION 1. Any member or members of any district or local lodge circulating or causing in any manner to be circulated any false or malicious statement reflecting upon the private or public conduct, or falsely or maliciously attacking the character, impugning the motives, or questioning the integrity of any officer of the Grand Lodge, or officer or member of any local lodge, shall be deemed guilty of conduct unbecoming a member and subject to fine or expulsion, or both.

SEC. 2. Any member or members of any local lodge who attempt to inaugurate or encourage secession from the Grand Lodge or any local lodge, or who advocate, encourage, or attempt to inaugurate any dual labor movement, or who violate the provisions of the Constitution of the Grand Lodge, or the constitution for local lodges, shall, upon conviction thereof, be deemed guilty of conduct unbecoming a member and subject to fine or expulsion, or both.

SEC. 3. The International President and Executive Council shall have authority to expel any member guilty of joining, or participating in any dual organization.

SEC. 4. It is the duty of any member of a local lodge, who has information of a violation of any provision of the Constitution of the Grand Lodge or the constitution for local lodges by any member of the local lodge of which he is a member, to immediately prefer charges in writing against such member, by filing the same with the president of such local lodge. The president of the local lodge with whom the charges are filed shall forthwith proceed to bring the accused to trial under the provisions of the Code, as set forth in Article K of the "Constitution for Local Lodges of The International Association of Machinists."

SEC. 5. In the event that any local lodge, or the members thereof, fail to proceed under the provisions of Section 4 of this Article, or fail or refuse to punish members thereof who are guilty of violating the provisions of the Grand Lodge Constitution or the constitution for local lodges, then, and in that event, any officer of the Grand Lodge or

237

any local lodge, or members thereof, may prefer charges against such member or members by filing the same in writing with the International President. Upon the receipt of such charges the International President shall forward one copy thereof to the accused and one copy thereof to the president of the local lodge of which the accused is a member, together with an order commanding said local lodge to proceed to place the accused on trial under the provisions of the Code as set forth in Article K of the "Constitution for Local Lodges of The International Association of Machinists." If said local lodge fails or refuses, for fifteen (15) days thereafter, to proceed as ordered by the International President, then the International President shall notify the accused and the local lodge of which he is a member of the time and place, when and where the Executive Council will meet for the purpose of hearing evidence and trying the accused upon charges theretofore preferred. At such trial before the Executive Council, the accused shall be entitled to all of the privileges set forth in Section 3 of the Code hereinabove referred to.

Appeals.

SEC. 6. Appeals may be taken from the decision of the International President to the Executive Council. Appeals may be taken from the decision of the Executive Council to a convention of the Grand Lodge, or to the membership at large by submission thereof through the referendum. All appeals shall be laid before the body to whom addressed through the General Secretary-Treasurer. Before any appeals can be taken from any decision of the Executive Council, the decision, and all orders of the Executive Council in relation thereto, must be fully complied with by all parties concerned therein in order to entitle them to enter an appeal, and in no case shall any district or local lodge, or any individual member or members thereof, appeal to the civil courts for redress until after having exhausted all rights of appeal under the provisions of this Constitution. No member of the Executive Council shall have a vote on any appeal on which he has already rendered a decision.

ARTICLE XXII.

Revision of the Constitution.

SECTION 1. Ninety days before the convening of any convention of the Grand Lodge of The International Association of Machinists the General Secretary-Treasurer shall notify all local lodges to elect a committee on the revision of Constitution. All proposed amendments to the Constitution of the Grand Lodge and the constitution of local lodges that come before any local lodge shall be referred to this committee for consideration and recommendation, and, upon the approval of any such proposed amendment by the local lodge, the committee on revision of the Constitution shall forward the same to the General Secretary-Treasurer at least forty-five (45) days prior to the date of the convening of the convention. All such proposed amendments that have been forwarded to the General Secretary-Treasurer forty-five (45) days prior to the date of the convening of the convention shall be compiled, printed in the form of a circular, and mailed by him to each local lodge thirty (30) days before the date of the convening of the convention.

Meeting and Report of Committee on Law.

SEC. 2. The Committee on Law shall meet at the place where the convention is to be held seven (7) days prior to the date of convening for the purpose of considering all amendments proposed by local lodges under the provisions of Section 1 of this Article. The findings and recommendations of the Committee on Law shall be reported to the convention as soon as practicable after the convening thereof.

Submission of Amendments to the Membership.

SEC. 3. Immediately after the adjournment of the convention the Committee on Law shall furnish the General Secretary-Treasurer with copies of all amendments approved by the convention, compiled in the form of a ballot suitable for submission to the membership of all local lodges through the referendum. Within thirty (30) days

thereafter the General Secretary-Treasurer shall call for a special referendum for the acceptance or rejection of all amendments approved by the convention. The provisions of Article XVIII of this Constitution shall control such special referendum, except that the endorsements thereof by local lodges required under Section 2, and the publication required under Section 5 shall not apply to such special referendum election, and the name of the month during which the ballots shall be cast as mentioned in Section 6 shall be changed to conform to the date required by the calling of the special referendum.

Compiling of Constitution.

SEC. 4. Whenever a ballot has been taken upon changes in the Constitution as the result of recommendations made by a regular or special Convention of our Association, the Law Committee shall be called in to Headquarters during the month of February to incorporate in the Constitution, the changes adopted by such referendum, and are authorized to revise and correct all such parts of the law as are affected by such changes in order that confliction as between law and law may be eliminated.

Compensation of Committee on Law.

SEC. 5. The members of the Committee on Law shall receive the sum of twelve dollars ($12.00) per day when engaged in the performance of their duties at conventions or at the headquarters of the Grand Lodge of The International Association of Machinists.

ARTICLE XXIII.

Beneficiary Department—Who May Participate.

SECTION 1. (a) The Grand Lodge shall establish and maintain a separate and distinct department to be known as the Beneficiary Department of the International Association of Machinists.

(b) All members who are eligible may participate in the Beneficiary Department, for the purpose of providing substantial relief for members who may become totally and

240

permanently disabled or incapacitated to perform any manual labor, and for the purpose of providing a death benefit to be paid to one or more of the prescribed beneficiaries named herein upon the death of a member; provided, that the certificate has not been previously satisfied and cancelled because of the allowance and payment of his disability claim.

(c) A member may designate as his beneficiary or beneficiaries one or more persons of the following class, and no other, viz.: wife, child or children, mother, father, sisters, brothers, blood relations, or persons dependent upon him for support, and in the event that a member has no wife or children living, he may then designate his estate as a beneficiary.

(d) If the beneficiary is a minor the fund must be paid to the duly appointed guardian, but, should there be no legally designated beneficiary, then the fund shall be paid to the estate of the deceased member.

(e) The term of child or children shall include step-children and legally adopted children. The term father and mother shall include step-father and step-mother, foster-father and foster-mother, when dependent, and the terms brothers and sisters shall include half-brothers and half-sisters, but shall not include step-brothers and step-sisters.

Application for Beneficiary Certificate.

SEC. 2. Any member of a local lodge may make application for a Beneficiary Certificate, the form of which shall be prepared by the General Secretary-Treasurer, with the approval of the Executive Council.

FORMULA

SEC. 3. The basis of Death and Disability Benefits, the eligibility of members for certificates hereunder, and the amount of the certificates on each member are as follows:

(a) Any member in a local lodge who shall apply for a Certificate of Death and Disability Benefits and furnish certificate of good health and physical condition acceptable to the Grand Lodge and approved by it, upon payment of

the beneficial dues herein established shall be entitled to participate in the Beneficiary Department, except:

(1) Persons under sixteen years of age and over fifty years of age on the date of their application for Certificates of Death and Disability Benefits.

(2) Persons enrolled or who become enrolled in military or naval service in time of war, except as hereinafter provided.

(3) Persons dropped, suspended or expelled from membership in a local lodge or from individual affiliation with the Grand Lodge.

(4) Persons excluded from participation in the Beneficiary Department under (1), (2) and (3) of Section 3 shall be included from the date whereon they shall become eligible by acquired age, discharge from service, a reinstatement to membership.

(b) The amount of the certificate issued to each member eligible to participate in the Beneficiary Department shall be $500.00, and shall be made payable to the beneficiary named therein upon proper proof of death of the member to whom the same was issued, and to the member to whom the same was issued upon receipt of said proof before the expiration of 18 months from the time he became disabled, and that he has, before having attained the age of 60 years, become wholly disabled by bodily injury or disease, and has been so disabled continuously for a period of 12 months, and will be permanently, continuously, and wholly prevented thereby for life from engaging in any occupation or employment for wage or profit, provided that such disease or disability is not the result of alcoholic or narcotic excesses or venereal disease contracted as the result of self-indulgence, or by insanity produced by any of these exceptions. Among other causes, total and irrecoverable loss of sight of both eyes or of the use of both hands of both feet, or of one hand and one foot, constitute such disability. These provisions for disability benefits shall not apply to the holder of a Certificate of Death and Disability Benefits, if at the date of his application for such certificate he had lost a hand or a foot or the sight of an eye, or if subject to any other infirmity which renders such member ineligible; but in the last mentioned event the fact of ineligibility shall be noted on the certificate.

242

(c) If the applicant is eligible to participate in the Beneficiary Department, the General Secretary-Treasurer shall issue a Certificate of Death and Disability Benefits and forward the same to the financial secretary of the local lodge, who shall deliver it to the member. A Certificate of Death and Disability Benefits shall become effective at twelve o'clock noon on the day the same is issued by the General Secretary-Treasurer.

(d) Should it become necessary to hold an application for a Certificate of Death and Disability Benefits for further information, notice shall be sent to the applicant and the financial secretary of the local lodge of which the applicant is a member, advising them that the application has neither been accepted nor rejected, but is being held for further information. The form requiring certain additional information shall be forwarded direct to the applicant, notifying him to call upon the financial secretary of the local lodge of which he is a member, have this additional information placed on said forms and return them to the General Secretary-Treasurer.

Form of Certificate of Death and Disability Benefits.

SEC. 4. (a) The Certificate of Death and Disability Benefits shall state the name, card number, and the number of the local lodge of the applicant, the amount of the certificate, the conditions upon which the certificate is issued, the date of issuance and shall be signed by the President and the General Secretary-Treasurer of the Grand Lodge of The International Association of Machinists.

(b) The form of the certificate shall be determined by the General Secretary-Treasurer, with the approval of the Executive Council, and must be made to conform with the Constitution of the Grand Lodge of the International Association of Machinists.

Beneficial Dues.

SEC. 5. Each member holding a Certificate of Death and Disability Benefits shall pay or remit to the financial secretary of his local lodge, promptly, in advance, the sum of two dollars and twenty-five cents quarterly. Upon his

failure to make such remittance or payment his Certificate of Death and Disability Benefits shall forthwith lapse, void, and he shall forfeit all right and title he or his beneficiaries may have to any benefits or claims against the Beneficiary Fund of the Grand Lodge of The International Association of Machinists.

Any member may pay his beneficial dues semi-annually by paying or remitting four dollars and fifty cents semi-annually; or annually by paying or remitting nine dollars annually.

Although not protected while in arrears, a member within the age limit and furnishing a satisfactory certificate of good health may be reinstated in the Beneficiary Department at any time before the expiration of the quarterly period for which he has failed to pay the quarterly beneficial dues in advance, by paying the same and obtaining a dated and numbered receipt from the financial secretary therefor. Such financial secretary shall immediately notify the General Secretary-Treasurer that he has accepted and receipted for such delinquent payment.

Change of Beneficiary.

SEC. 6. (a) A member desiring to change his beneficiary, shall make such change in writing on the form printed on the back of the Certificate of Death and Disability Benefits, and such change may be made without the consent of the beneficiary. The member's signature thereto shall be acknowledged before a Notary Public, or other officer authorized by law to take acknowledgments, and such officer shall attach his official seal thereto, or having no official seal, a certificate of a court of record certifying that the officer taking the acknowledgment was duly qualified. Said certificate must be forwarded to the General Secretary-Treasurer.

(b) A change of beneficiary shall not become valid or have any effect whatsoever until the original certificate is received and cancelled by the General Secretary-Treasurer and a new certificate issued, wherein the newly designated beneficiary is named. When, however, a member's Certificate of Death and Disability Benefit has been lost or destroyed, or possession of the same is denied or refused to the member by anyone having possession of same, the

member may direct a change of beneficiary upon a form furnished by the General Secretary-Treasurer wherein the member shall describe the missing certificate, explain why he cannot surrender same, direct its cancellation, that all shall cease thereon, and authorize the issuance of a new certificate on which beneficial dues shall be payable. Such statement shall be signed and acknowledged in the same manner as is herein provided for in an application for a change of beneficiary.

(c) Beneficiaries shall not acquire, have or exercise any legal or equitable or vested right, title or interest in or to a Certificate of Death and Disability Benefit, or the proceeds thereof, whereon to prevent any member from changing his beneficiary, nor shall any such Certificate of Death and Disability Benefits be assigned, pledged or deposited as collateral for any purpose whatsoever.

Collection of Beneficial Dues.

SEC. 7. (a) The financial secretary of each local lodge shall collect all of the beneficial dues from the members of the lodge under their respective Certificates of Death and Disability Benefits; he shall keep a systematic account of all dues so collected, and he shall turn over the collections made by him to the treasurer of the local lodge at the close of each meeting, and take the receipt of the treasurer therefor, and he shall keep a correct account between the lodge and the beneficial members thereof.

(b) At the end of each month the financial secretary and treasurer shall prepare a monthly report, in duplicate, one of which shall be sent to the General Secretary-Treasurer. The duplicate report shall contain in detail the names, card numbers, and amounts paid by all members of the local lodge as beneficial dues on their respective Certificates of Death and Disability Benefits. He shall remit to the General Secretary-Treasurer an amount equal to the beneficial dues so collected.

Funds.

SEC. 8 (a) All moneys received by the Beneficiary Department of the Grand Lodge from the payment of quar-

245

terly, semi-arnual, and annual Beneficiary dues by the holders of Certificates of Death and Disability Benefits shall be divided and placed into two funds by the General Secretary-Treasurer, which funds shall be known as the Beneficiary Fund and Beneficiary Expense Fund. There shall be placed in the Beneficiary Fund ninety (90%) per cent of all moneys received by the Grand Lodge from such beneficial dues and there shall be placed in the Beneficiary Expense Fund ten (10%) per cent of all moneys received by the Grand Lodge from such beneficial dues.

(b) None of the moneys or property belonging to the Beneficiary Fund, or its accretions from interest or otherwise, shall be transferred from said fund or used for any purpose other than the payment of death and disability benefits.

(c) The moneys or property belonging to the Beneficiary Expense Fund shall be used by the Grand Lodge to meet the expense incident to establishing, maintaining and administering the Beneficiary Department of the International Association of Machinists, and in paying the compensation of the financial secretaries as herein provided. If all the funds in the Beneficiary Expense Fund shall not be required for expenses in any one year, the Executive Council may order the General Secretary-Treasurer to transfer from the Beneficiary Expense Fund to the Beneficiary Fund so much of the Expense Fund as may not be necessary for expenses and as may be proper and desirable in the judgment of the Executive Council.

(d) Upon receipt of the monthly report and remittance required under Section 7 (b) hereof the General Secretary-Treasurer shall pay to the financial secretary of the local lodge so reporting and remitting an amount equal to five (5%) per cent of the total Beneficial Dues collected and remitted by such local lodge as compensation to such financial secretary for his services to the Beneficial Department of The International Association of Machinists.

(e) All death and disability benefits shall be paid from the Beneficiary Fund in conformity with the provisions of this Constitution, and no other funds or property of the Grand Lodge shall be liable for the payment thereof nor shall the Grand Lodge be liable beyond the amount at any time available in the Beneficiary Fund.

(f) The Executive Council shall have full control over the Beneficial Fund, and may invest and reinvest the same in government, state, provincial, county, municipal, first mortgage, railroad, industrial, and public utility bonds, but in no other securities whatsoever, and all such investments shall be in the name of the Beneficial Fund of the International Association of Machinists and shall belong to and at all time constitute a part of such Beneficial Fund.

Death Claims.

SEC. 9. (a) Upon the death of a beneficiary member in good standing, the person duly designated in the Certificate of Death and Disability Benefits of the deceased member, shall be entitled to receive from the Beneficiary Fund the sum of five hundred dollars ($500) unless there shall be ample proof furnished to the General Secretary-Treasurer that said certificate was procured by making false statements at the time of making application for a Certificate of Death and Disability Benefits.

(b) It shall be the duty of the financial secretary of the lodge of which the deceased was a member, to immediately forward to the General Secretary-Treasurer a report of the death of said member, on a form funished by the General Secretary-Treasurer, giving such other information as may be required. The report of death must not be held awaiting completion of other papers, but must be reported at once to insure prompt payment of the claim, when all necessary papers are filed with the General Secretary-Treasurer.

(c) There shall be forwarded to the General Secretary-Treasurer an affidavit by the attending physician, which shall set forth the date and cause of death. The financial secretary shall forward a statement under the seal of the local lodge, certifying to the good standing of the member at the time of his death. Affidavits of at least two other reputable witnesses shall be filed with the General Secretary-Treasurer to prove the death of the member. If a physician was in attendance at the time of the death, his affidavit shall be filed, or if a coroner held an inquest over the remains, a copy of the inquest shall be filed. At least one of the sworn proofs of death shall positively identify the

247

deceased whose claim is filed as being the member to whom the Certificate of Death and Disability Benefits was issued.

(d) The financial secretary shall forward these statements together with the Certificate of Death and Disability Benefits of the deceased to the General Secretary-Treasurer, who shall adjust the claim, if same is found to be valid. The financial secretary of the local lodge, when receiving the Certificate of Death and Disability Benefits of the deceased member, shall furnish the one from whom he received the certificate a receipt, placing thereon the number of the certificate and the name of the beneficiary.

Disappearance of Members.

SEC. 10. No lapse of time, nor absence, nor disappearance of a member, without proof of the actual death of such member, shall entitle his beneficiary or any other person to receive a death benefit. The Beneficiary Department shall be liable for the payment of a death claim only when there is positive proof of the death of a beneficiary member.

Disability Claims.

SEC. 11. (a) The holder of a Certificate of Death and Disability Benefits, who, before having attained the age of 60 years has become wholly disabled by bodily injuries, or disease, provided that such disease is not the result of alcoholic or narcotic excesses, or venereal disease, contracted as the result of self-indulgence, or insanity produced by any of these exceptions, and has been so disabled continuously for a period of 12 months and will be permanently, continuously and wholly prevented thereby for life, from engaging in any occupation or employment for wages or profit, shall be entitled to receive from the Beneficiary Fund the sum of $500.00 provided such claim is filed within 18 months after suffering such total disability, during which period he must have been continuously unable to engage in any occupation for wages or profit for a period of, at least, 365 consecutive days, immediately preceding the time of presenting his claim for benefits, unless there shall be ample proof furnished to the General Secretary-Treasurer that such certificate was procured by making false statements at the time of making application therefor.

(b) A member who believes he is entitled to the payment of his claim of total disability benefits under the provisions of this Section, and desires to make application for such payment, shall file with the General Secretary-Treasurer, through the financial secretary of the local lodge of which he is a member, an application for such total disability benefits on a form furnished by the General Secretary-Treasurer, together with the following affidavits:

Affidavit of the President, the Financial Secretary, and the Treasurer of Lodge No._____ International Association of Machinists, in the Claim of Brother _____ of said lodge.

State (or Province) of_____

County of_____, ss.

On this_____day of_____, 19____, personally appeared before me, the undersigned authority, _____ President of Lodge No._____of the International Association of Machinists, and_____ Secretary, and _____ Treasurer of said Lodge, who first being duly sworn, each for himself, deposes and says:

I have made a careful and thorough inquiry into the present physical condition of_____ member of said lodge, whose claim for total disability benefits is about to be filed for allowance, and from my personal knowledge and belief, I do believe the said member is affected as he states in his application, and I believe he is entitled to be examined as provided by the Constitution of the International Association of Machinists.

Witness my signature this_____day of _____, 19____

_____
President.

_____
Secretary.

_____
Treasurer.

Subscribed and sworn to before me the day and year above written.

Notary Public.

(SEAL)

My commission expires on_____, 19____

(c) Upon receipt of the application and affidavits mentioned in (b) hereof, the General Secretary-Treasurer shall designate a regular licensed and practicing physician, residing and practicing in the locality where the applicant resides, to make a physical examination of the applicant. Prompt notice of the name and address of such physician shall be mailed to the applicant and the financial secretary of the local lodge of which the applicant is a member.

Thereupon, the applicant shall present himself for a physical examination before the physician designated, and immediately upon the completion of the physical examination, the physician shall report his findings to the General Secretary-Treasurer. Nothing in these provisions shall preclude the applicant from filing such additional proof of his physical condition as he may desire to file with the General Secretary-Treasurer.

(d) All papers in the claim shall be examined by the General Secretary-Treasurer, and if they show that the member is entitled to disability benefits under the provisions of this Constitution, he shall promptly adjust the claim and cancel the Certificate of Death and Disability Benefits under which the claim was made. Such certificate shall thereafter be void and carry no benefits whatsoever.

(e) In the event that a claim for benefits under a Certificate of Death and Disability Benefits is disallowed by the General Secretary-Treasurer, the claim shall be referred by the General Secretary-Treasurer to the Executive Council at the first meeting of the Council thereafter held; providing the disallowed claim shall be immediately referred to the Council, if then in session. The Executive Council shall examine the claim and render its decision thereon within thirty days thereafter.

ARTICLE XXIV.

Authority Restricted.

All authority and power not specifically delegated to the officers in this Constitution is reserved to the membership.

CONSTITUTION FOR LOCAL LODGES

of the

International Association of Machinists

RULES OF ORDER

Rule 1. On motion, the regular order of business may be suspended by a two-thirds vote of the meeting at any time to dispose of anything urgent.

Rule 2. All motions (if requested by the chair) or resignations must be submitted in writing.

Rule 3. Any conversation by whispering or otherwise, which is calculated to disturb a member while speaking or hinder the transaction of business, shall be deemed a violation of order.

Rule 4. Sectarian discussion shall not be permitted in the meeting under any circumstances.

MOTION

Rule 5. A motion to be entertained by the presiding officer must be seconded, and the mover as well as the seconder must rise and be recognized by the chair.

Rule 6. Any member having made a motion can withdraw it by consent of his second; but a motion once debated cannot be withdrawn except by a majority vote.

Rule 7. A motion to amend an amendment shall be in order, but no motion to amend an amendment to an amendment shall be permitted.

DEBATE

Rule 8. A motion shall not be subject to debate until it has been stated by the chair.

Rule 9. When a member wishes to speak he shall rise and respectfully address the chair, and if recognized by the chair, he shall be entitled to proceed.

Rule 10. If two or more members rise to speak at the same time the chair shall decide which is entitled to the floor.

251

Rule 11. Each member when speaking shall confine himself to the question under debate, and avoid all personal, indecorous or sarcastic language.

Rule 12. No member shall interrupt another while speaking except to a point of order, and he shall definitely state the point, and the chair shall decide the same without debate.

Rule 13. If a member, while speaking, be called to order he shall take his seat until the point of order is decided, when, if declared in order, he may proceed.

Rule 14. If any member shall feel himself personally aggrieved by a decision of the chair, he may appeal to the body from the decision.

Rule 15. When an appeal is made from the decision of the chair the Vice-President shall then act as chairman; said appeal shall then be stated by the chairman to the meeting in these words: "Shall the decision of the chair be sustained as the decision of this Lodge?" The member then will have the right to state the grounds of appeal, and the chair will give reasons for his decision; thereupon the members will proceed to vote on the appeal without further debate, and it shall require a majority to sustain an appeal.

Rule 16. No member shall speak more than once on the same subject until all the members desiring the floor shall have spoken, not more than twice without unanimous consent, nor more than five minutes at any one time without consent of a two-thirds vote of all members present.

Rule 17. The presiding officer shall not speak on any subject unless he retires from the chair, except on points of order, and in case of a tie he shall have the casting vote.

PRIVILEGE QUESTIONS

Rule 18. When a question is before the meeting no motion shall be in order except:

1. To adjourn.
2. To lay on the table.
3. For the previous question.
4. To postpone to a given time.
5. To refer or commit.
6. To amend; and these motions shall have precedence in the order herein arranged. The first three of these motions are not debatable.

Rule 19. If a question has been amended, the question on the amendment has been amended, the question on the amendment has been offered the question shall then be put as follows:

1. Amendment to the amendment.
2. Amendment.
3. Original proposition.

Rule 20. When a question is postponed indefinitely it shall not come up again except by a two-thirds vote.

Rule 21. A motion to adjourn shall always be in order except:

1. When a member has the floor.
2. When members are voting.

Rule 22. Before putting a question to vote the presiding officer shall ask, "Are you ready for the question?" Then it shall be open for debate. If no member rises to speak, the presiding officer shall then put the question in this form: "All in favor of this motion say 'aye';" and after the affirmative vote is expressed: "Those of the contrary opinion say 'no'." After the vote is taken he shall announce the result in this manner: "It seems to be carried (or lost); it is carried (or lost) and so ordered."

Rule 23. Before the presiding officer declares the vote on a question, any member may ask for a division of the house. Then the chair is in duty bound to comply with the request, and a standing vote shall then be taken, and the secretary shall count the same.

Rule 24. When a question has been decided it can be reconsidered by a majority vote of those present.

Rule 25. A motion to reconsider must be made and seconded by two members who voted with the majority.

Rule 26. A member being ordered to take his seat three times by the chair without heeding shall be debarred from participating in any further business at that session.

Rule 27. All questions, unless otherwise provided, shall be decided in accordance with Robert's Rules of Order.

ARTICLE A.

Definitions.

A Local Lodge.

SECTION 1. A local lodge shall consist of not less than fifteen (15) persons in any locality, qualified for membership and organized as a local lodge under a charter issued by the Grand Lodge of The International Association of Machinists.

A Machinist.

SEC. 2. A "machinist" is a person who has served an apprenticeship of four (4) years at the machinists' trade; or a person who has worked for four (4) years at the machinists' trade in any of its branches or subdivisions, and who can, with the aid of tools, with or without drawings, make, repair, erect, assemble or dismantle machinery or parts thereof.

Automobile and Aircraft Machinists or Mechanics.

SEC. 3. An Automobile or Aircraft Machinist or Mechanic is a person who has served an apprenticeship of four (4) years at the Automobile or Aircraft Machinists' or Mechanics' trade; or a person who has worked for four (4) years at the Automobile or Aircraft Machinists' or Mechanics' trade in any of its branches or sub-divisions, and who can, with the aid of tools, repair, erect, assemble, dismantle and maintain Automotive or Aircraft equipment or parts thereof.

A Specialist.

SEC. 4. A specialist is a person who is employed in some branch or subdivision of the machinists' trade, or a person who performs some particular line of work commonly recognized as work connected with the machinists' trade or the metal industry.

Machinist Helper.

SEC. 5. A "machinist helper" is a person employed in the machine or metal industry in any of its branches or subdivisions and assigned to assist a mechanic in the machinists' trade in the performance of his duties and who is competent to command the minimum rate of wages paid in the locality where he is employed.

An Apprentice.

SEC. 6. (a) An indentured "apprentice" is a person who, while between sixteen (16) and twenty-one (21) years of age, is engaged to an employer to serve four (4) years in learning the machinists', automobile or aircraft machinists' or mechanics' trade.

(b) A "helper apprentice" is a person who having been a member of a local lodge for at least one (1) year and having worked at least one (1) year as a machinist helper has thereafter, and while under the age of thirty-five (35) years, engaged himself to an employer to serve four (4) years in learning the machinists' trade.

Production Worker.

SEC. 7. In the Machinists' craft a production worker is a person employed in the mass production metal industry engaged in repetitive machine work or assembly work, or bench work, requiring less training, experience and skill than that necessary to qualify one as a machinist.

ARTICLE B.

Organization of Local Lodges.

SECTION 1. Every application for a charter for the organization of a local lodge of The International Association of Machinists must be signed by at least fifteen (15) applicants who possess the qualifications for membership and are working in a locality where there are a sufficient number of machinists, automobile or air craft machinists or mechanics, specialists, machinist helpers, apprentices and production workers employed to maintain a local lodge.

Fees.

SEC. 2. A fee of not less than five dollars ($5.00) shall be charged to each applicant. A charter fee of not less than twenty-five dollars ($25.00), payable to the Grand Lodge, shall accompany every application for a charter, except in the case of an application for a charter organizing a machinist helpers lodge, when the charter fee shall be not less than fifteen dollars ($15.00). The Grand Lodge is entitled to and shall receive the sum of two dollars ($2.00) from each applicant after the first one hundred (100) charter members are enrolled. Charters may be closed at any time within thirty (30) days, but in no case shall charter members be enrolled after that period.

Form of Application.

SEC. 3. Every application for a charter for the organization of a local lodge shall contain the following information: (a) The number of machinists, automobile or air craft machinists or mechanics, specialists, machinist helpers, apprentices and production workers employed in the locality. (b) The name of each applicant who is a member in good standing of any local lodge, together with his card number and the number of the local lodge to which he belongs. (c) The name of each applicant whose membership has been previously cancelled, together with the number of the local lodge of which he was last a member. (d) The petition and pledge of the applicants in language as follows:

"The undersigned residents of (place)————————, (State) ————————, believing The International Association of Machinists to be well calculated to improve our intellectual and social conditions and promote our industrial well-being and advancement, respectfully petition The International Association of Machinists to grant us a charter to open a new lodge, to be located in the (town or city) of————————, county of————————, State of————————. We pledge ourselves individually and collectively to be governed by the Constitution, laws, rules and usages of The International Association of Machinists. The Lodge desires to be recognized as————————Lodge."

256

Granting Charter.

SEC. 4. Every such application for a charter shall be forwarded to the General Secretary-Treasurer, who shall submit the same to the International President. If the application is approved by the International President, he shall cause the charter to be granted and designate a member as the representative of the Grand Lodge to install the officers and instruct the members of such local lodge in the principles, usages and laws of The International Association of Machinists.

Restrictions.

SEC. 5. No application for a charter shall be granted which proposes to separate any local lodge into two or more local lodges unless the application has been approved by a called meeting of the local lodge or lodges in the locality mentioned in the application.

Who May Obtain Charters.

SEC. 6. In localities where there are a sufficient number of machinists, die sinkers, die or tool makers, automobile or aircraft machinists or mechanics, specialists, production workers, or machinist helpers employed in any one or more divisions of the trade, separate local lodges may be organized for the benefit of those employed in the respective divisions.

In localities where there are not a sufficient number of machinists, die sinkers, die or tool makers, automobile or aircraft machinists or mechanics, specialists, production workers, or machinist helpers employed in any one or more divisions, a mixed local lodge may be organized, with a membership composed of persons employed in all divisions of the trade.

No local lodge of machinist helpers shall be organized without first obtaining the sanction of the district lodge, or of the local lodge or lodges of that locality, if no district lodge exists.

No local lodge charter shall be granted by the International President in a locality within the jurisdiction of a district lodge, until such district lodge has been consulted,

257

and in the event of failure to reach an agreement, the Executive Council shall be required to render a decision as to whether such charter shall be granted or not.

Membership Cancelled.

SEC. 7. Whenever persons whose membership in this Association has been cancelled apply for charter membership in a local lodge in process of organization, it shall be the duty of the Grand Lodge Representative to collect the charter fee from such persons and forward the same, together with their applications, to the General Secretary-Treasurer, who, upon ascertaining that there are no unpaid fines or assessments against them, shall prepare their reinstatement books and credit the amount paid into the Grand Lodge.

By-Laws.

SEC. 8. Each local lodge may adopt its own by-laws, provided that nothing is contained therein which is contrary to the provisions of the Grand Lodge Constitution or the constitution for local lodges of The International Association of Machinists. The proposed by-laws of all local lodges and all amendments thereafter proposed, except as to time and place of meeting, shall be submitted to the International President for examination, correction, and approval before being adopted.

Parliamentary Laws.

SEC. 9. The Rules of Order governing parliamentary procedure shall be printed in the copies of the Constitution of the Grand Lodge, and no other rules shall apply.

Meetings and Quorums.

SEC. 10. Each local lodge shall hold at least two (2) regular meetings during each month and shall determine how many of its members shall constitute a quorum, provided it be not less than five. Special meetings shall be called by the president upon the written request of ten per cent (10%) of the members of a local lodge, provided,

however, that a special meeting shall be called upon the written request of one hundred (100) members, and no special meeting shall be called on the written request of less than ten (10) members, regardless of the total membership of such local lodge.

Order of Business.

SEC. 11. The order of business for each local lodge shall be as follows:

1. Roll call of officers and noting of absentees.
2. Reading and approval of minutes.
3. Introduction of visiting members.
4. New applications.
5. Report of committees on applications.
6. Initiation.
7. Communications, bills, etc.
8. Reports of committees.
9. Report of members out of work and positions vacant.
10. Good and welfare of the Association and discussion of subjects of an economic nature.
11. Unfinished business.
12. New business. Election of officers.
13. Report on sick and disabled members and of Relief Committee.
14. Installation of officers.
15. Report of secretary and treasurer, including receipts and disbursements since the close of the last meeting.

Local Lodge Seal.

SEC. 12. Each local lodge shall procure a seal from the General Secretary-Treasurer, which seal shall be made in accordance with the design adopted by the Grand Lodge of The International Association of Machinists. The local lodge seal shall be and remain in the custody of the recording secretary, and no paper, document, or communication issued by the local lodge shall be valid unless it bears the impression of said seal.

Illegal Use of Seal.

SEC. 13. Any officer or member of a local lodge who uses the seal of such lodge for any purpose without permission from the lodge shall be fined, suspended, or expelled, at the option of the local lodge of which he is a member.

Grand Lodge Control Over Property.

SEC. 14. In case of the suspension, revocation of the charter, expulsion, lapsing, or disbanding of any local lodge for any cause or reason whatsoever, it shall be the duty of the recording secretary, acting in conjunction with the trustees, to send all funds and property belonging to such local lodge to the General Secretary-Treasurer of the Grand Lodge to be held by him, intact, for a period of at least six (6) months. If within that period application is made therefor by at least fifteen (15) members in good standing in that locality, such local lodge shall be reopened and the funds and property returned thereto. And in the event that such local lodge is not reopened, all funds and property shall belong to and become the property of the Grand Lodge.

Funds and Property of Merged Lodges.

SEC. 15. Whenever two or more local lodges merge or consolidate, the stamps, funds and property of such merged lodges shall be sent to the Grand Lodge. After the accounts of the merged lodge or lodges are balanced, such balance as remains shall be returned by Grand Lodge to the local lodge created by such merger, or consolidation.

ARTICLE C.

Officers of Local Lodges.

SECTION 1. The officers of all local lodges shall consist of a president, a vice president, a recording secretary, a financial secretary, a treasurer, a conductor, a sentinel, a board of trustees consisting of three (3) members, and a past president who shall be the statistician.

Terms of Officers.

SEC. 2. Officers of newly organized local lodges shall hold office until the first meeting in January following their election, and thereafter the term of office shall be for one year, except that at the first regular election of any local lodge one trustee shall be elected for a term of six (6) months, one for a term of twelve (12) months, and one for a term of eighteen (18) months. Thereafter their successors in office shall be elected for a term of eighteen (18) months, resulting in the election of one trustee every six months. The retiring president shall be the past president and statistician for the ensuing year. In newly organized local lodges, or in the case of a vacancy, the president shall appoint a past president, who shall be the statistician.

Qualifications for Office.

SEC. 3. Except at the first regular election of officers of a local lodge, all candidates for any elective office must be members of the local lodge in good standing for at least one year and free from delinquency of any nature to the Grand Lodge or any district or local lodge of The International Association of Machinists.

Further, any officer of a local or district lodge, who shall be found to be indebted to any such local or district lodge by reason of any shortage of any funds, accounts or securities intrusted to him for any purpose or purposes whatsoever, shall immediately forfeit his office and thereafter be permanently disqualified from holding any office within the province of any such local or district lodge of The International Association of Machinists.

Local or District Lodge Elections and Appointment of Tellers.

SEC. 4. Whenever a local or district election is held by a referendum and there are more than two candidates contesting for election, the lodge or district may by a majority vote decide in advance that the candidates who receive the highest vote shall be declared elected and in such elections men at outlying points and employed on shifts that prevent their attendance at meeting will be permitted to vote by mail.

In all other cases where the voting is done in the lodge room exclusively a majority of all votes cast will be required for a decision and the president in both cases shall appoint three (3) tellers to assist in conducting the election in a fair and impartial manner.

Election of Officers.

SEC. 5. Each local lodge, at its first meeting in the month of December shall elect a president, a vice president, a recording secretary, a financial secretary, a treasurer, a conductor, a sentinel, and one member of the board of trustees. No member shall hold more than one office.

Installation.

SEC. 6. The installation of officers shall take place at the first meeting of the local lodge held in the month of January and after the report of the auditing committee. The ceremony of installation shall be conducted by the past president.

ARTICLE D.

Duties of Officers.

President.

SECTION 1. The president shall preside at all meetings of the local lodge, decide all questions or disputes not controlled by laws of the Association, countersign all orders properly drawn on the treasurer, and all checks properly drawn by the treasurer, and enforce all of the laws of the Association applicable to local lodges and members thereof, appoint all committees not otherwise provided for, and in case of a tie he shall cast the deciding vote. He shall administer the obligation to all new members and perform such other duties as may be required of him by the Constitution of the Grand Lodge and the constitution for local lodges.

262

Vice President.

SEC. 2. The vice president shall see that all persons entering the lodge room are members in good standing of some local lodge or affiliated with the Grand Lodge of The International Association of Machinists; he shall see that all property of the local lodge has proper care and shall assist the president in maintaining order; he shall preside at all meetings in the absence of the president, and in case of the death, removal, or resignation of the president, the vice president shall become president and serve as such until after the next regular election and installation of his successor in office.

Recording Secretary.

SEC. 3. The recording secretary shall conduct all of the correspondence for, and in the name of the local lodge; he shall present all communications and bills to the local lodge and deliver such bills to and for the files of the financial secretary; he shall forward all grievances, draw all orders on the treasurer when passed by the local lodge and attest the same by his signature and by attaching the seal of the local lodge thereto; he shall prepare and sign all credentials of delegates and alternate delegates to conventions of the Grand Lodge and forward duplicates thereof to the General Secretary-Treasurer; he shall have charge of the roll-book furnished by the Grand Lodge and enter therein a complete list of the members of the local lodge, including the respective card numbers and residence addresses of such members; he shall perform such other duties as are required of him by the Constitution of the Grand Lodge and the constitution for local lodges of the International Association of Machinists.

Financial Secretary.

SEC. 4. The financial secretary shall collect all dues, fines, assessments, and all moneys from any source for the benefit of the local lodge; he shall keep a systematic account of all disbursements and in such a way as to show the balance of cash on hand at the close of each meeting of the local lodge; he shall have on file all receipted bills, and

shall submit his books to the auditing committee of the local lodge at the end of each three (3) months' period; he shall turn over all moneys received by him since the close of the last meeting to the treasurer of the local lodge at the close of each meeting and take the receipt of the treasurer therefor; he shall keep a correct account between the lodge and its members, and shall notify any member who has become two (2) months in arrears. At the end of each month the financial secretary shall prepare a monthly report in duplicate, one of which shall be sent to the General Secretary-Treasurer. The duplicate report shall contain in detail the names, card numbers and amounts paid by all members of the local lodge and designate the months for which such payments were made. He shall remit to the General Secretary-Treasurer an amount equal to the per capita tax called for by the current monthly report. The monthly report shall include a correct statement of the number of members on the books of the local lodge, and shall set forth in detail all additions made and subtractions from the membership roll, together with a list of members who have been expelled and individuals whose applications have been rejected, with the reasons therefor; he shall receive from the General Secretary-Treasurer due stamps in proportion to the per capita tax paid upon each monthly report. In reporting persons whose membership is cancelled on the rolls, the financial secretary shall state whether there are any unpaid fines or any local lodge or district lodge assessments charged against the person's account. Unless the report states otherwise, the cause for such cancellation of membership shall be considered the non-payment of dues, and they may be again reinstated as provided for in Section 18 of Article F of the constitution for local lodges.

(a) Financial secretaries receiving dues from members working under the jurisdiction of another local lodge shall immediately notify the secretary of the lodge under whose jurisdiction the member is working, with full particulars as to name, card number, etc.

Transfers.

SEC. 5. When accepting members by transfer, the financial secretary shall enter the date and particulars of such

transfer in the member's due book and shall at once notify the General Secretary-Treasurer of such transfer on the official notification of transfer form furnished by the Grand Lodge. If a member of a machinist helpers local transfers and reclassifies as an apprentice in a machinists local, that fact should be stated in the notices provided for in this section. A failure upon the part of any financial secretary to comply with this section shall subject him to a fine of two dollars ($2.00).

Report to the Grand Lodge.

SEC. 6. Upon the receipt of reinstatement, or initiation fees, or dues, the financial secretary shall place the regular stamps received from the Grand Lodge for that purpose in the due book of the member making the payment, and shall cancel the stamps with the regulation cancelling stamp, showing date of payment and lodge number. Any financial secretary granting reinstatement books to persons whose membership has been cancelled in other local lodges shall subject his lodge to a fine of two dollars ($2.00) for each offense, which fine shall be payable to the Grand Lodge. The report of the financial secretary shall be signed by the president of the local lodge, bear the impression of the local lodge seal and shall be forwarded to the General Secretary-Treasurer immediately after the close of the month's business. Should the monthly report of any financial secretary fail to reach the General Secretary-Treasurer by the tenth (10th) day of the month following the month reported, the local lodge shall be subject to a fine of two dollars ($2.00) for each offense, which fine shall be payable to the Grand Lodge. Should the report of the financial secretary fail to reach the General Secretary-Treasurer before the expiration of the month following the month reported, the General Secretary-Treasurer shall thereupon notify the president of such local lodge of its suspension. A bond shall be obtained for the financial secretary through the General Secretary-Treasurer, with the bonding and fidelity department of the Grand Lodge as surety thereon.

District Per Capita Tax.

SEC. 7. The financial secretary shall obtain and draw an

order on the treasurer of the local lodge at the close of each month for the amount of per capita tax due the district lodge with which such local lodge is affiliated and forward the same to the financial secretary of the district lodge.

Treasurer.

SEC. 8. The treasurer shall receive all funds of the local lodge, give his receipt as evidence of the receipt thereof, and deposit the same in a bank of sound financial standing in the name of the local lodge. He shall pay all orders properly drawn on him by check, which check shall be countersigned by the president of the local lodge. A bond shall be obtained for the treasurer through the General Secretary-Treasurer, with the bonding and fidelity department of the Grand Lodge as surety thereon.

Conductor.

SEC. 9. The conductor shall examine all persons present prior to the opening of all meetings of the local lodge for the purpose of ascertaining whether any are in attendance who are not entitled to remain. He shall report to the president all members present who are in arrears for dues.

Sentinel.

SEC. 10. The sentinel shall answer all alarms at the door, report the same, and admit all who are entitled to admission.

Past President and Statistician.

SEC. 11. The past president and statistician shall attend all meetings of the local lodge, assist in initiations, instruct new members, and assist in securing a strict observance of all of the laws of the Association. He shall examine all applicants and visiting members as prescribed in the ritual.

Auditors.

SEC. 12. At the last meeting in the months of March, June, September and December of each year, each local

lodge shall elect an auditing committee, composed of three (3) members of the local lodge. Officers of the local lodge are not eligible to election as members of the auditing committee. The auditing committee shall immediately after the close of each quarter, proceed with the work of examining the books and accounts of the local lodge for the preceding three (3) months period. They shall call on the financial secretary for the duplicate financial statement, from which they shall proceed to take off a statement of the stamps used during the term they are about to examine, and tabulate the same on forms furnished therefor by the General Secretary-Treasurer.

The auditing committee shall render its report on a blank form furnished for that purpose by the General Secretary-Treasurer, and shall send a copy thereof to the Grand Lodge. The report of the auditing committee must be countersigned by the trustees of the local lodge. Should one or more auditors fail to be in attendance the trustees shall proceed with the work as though all of the auditing committee were present.

Trustees.

SEC. 13. The board of trustees shall have charge of all property belonging to the local lodge; shall see that all of the books are properly kept, and at the expiration of each quarter, shall assist the auditing committee in the examination of all books and accounts and verify the report of the auditing committee by attaching their signatures thereto. Should the work of auditing the books of the local lodge be delayed on account of the failure of one or more of the trustees to be in attendance, the auditors shall proceed to carry on the work in the same manner as though all of the trustees were present. The trustees of each local lodge shall be liable to the Executive Council of the Grand Lodge for all funds and other property of the local lodge under their control. A bond shall be obtained for all trustees who have $200.00 or more under their custody and control through the General Secretary-Treasurer with the bonding and fidelity department of the Grand Lodge as surety thereon.

ARTICLE E.

Duties of Local Lodges.

Minimum Wage Scale.

SECTION 1. Local or district lodges shall establish a minimum scale of wages in their respective localities for members employed as machine erectors, and no member of any local lodge shall accept work as a machinery erector under the minimum wage established for the locality wherein he is employed.

Local and district lodges may also establish minimum wage rates in their respective localities wherever they are in position to enforce such rates, subject to the approval of the Executive Council.

Economics.

SEC. 2. Each local lodge may discuss subjects of political economy under the heading "Good and Welfare," providing such discussion does not occupy more than twenty (20) minutes of the time of the meeting and does not include matters sectarian in religion or partisan in politics.

Legislative Committee.

SEC. 3. Each local lodge shall appoint a committee of three (3) members, to be known as the legislative committee, which committee shall assist in securing the enactment of legislation favorable to labor. The legislative committee shall gather information on all such laws enacted, the persons who have favored or opposed the same and from time to time forward such information to the editor of the Machinists' Monthly Journal.

Relief Committee.

SEC. 4. The president of each local lodge shall appoint a relief committee, of which he shall be chairman. The relief committee shall receive all moneys drawn for relief benefits and cause the same to be paid to the person for whom drawn within forty-eight (48) hours after receipt of same.

Cooperation of Lodges.

SEC. 5. In the cities where more than one local lodge exists, delegates from all such local lodges should meet at least once a month for the purpose of considering matters affecting the welfare of the Association, and shall report the results of such meeting to their respective lodges. Every effort shall be made to secure a harmonious co-operation among the local lodges.

Emergency Funds.

SEC. 6. Each local lodge shall set aside a percentage of its dues to be known as an "emergency fund," which fund may be used in case of emergency.

The funds of the local lodge shall not be divided by loan or any other method among or to the members individually. Nor shall they be divided between any local lodges whatsoever, unless the approval of the International President and the Executive Council is first obtained.

Voluntary Donations.

SEC. 7. No general appeal for financial aid shall be sent out by any local lodge to other local lodges unless the appeal has first been approved and countersigned by the International President. All moneys appropriated for financial aid by one local lodge to another local lodge must be sent to the General Secretary-Treasurer, who will acknowledge receipt of the same in the following monthly financial statement and forward the amount so paid to the local lodge for which appropriation was made.

ARTICLE F.

Membership.

Eligibility.

SECTION 1. Any machinist, automobile or aircraft machinist or mechanic, specialist, machinist helper, helper apprentice, production worker or any apprentice working in the machine or metal industry may be admitted to member-

ship in a local lodge of The International Association of Machinists upon assuming the obligation and paying the required fee.

Applications for Membership and Investigations.

SEC. 2. Every application for membership in a local lodge shall be presented to such lodge in writing by some member thereof, and shall state the name, residence, date and place of birth, occupation and place of employment of the applicant. If two-thirds (2/3) of those present consent thereto the local lodge may vote upon an application for membership at the same meeting at which the applicant is proposed; otherwise the application for membership shall be referred to a committee of three (3) members, two (2) of whom shall be appointed by the president and one of whom shall be appointed by the vice president. The committee shall investigate the eligibility of the applicant and report thereon at the next regular meeting of the local lodge, whereupon a yea and nay vote will be taken upon the question of the admission of the applicant to membership. A two-thirds (2/3) vote of those voting on the question shall be necessary to elect the applicant to membership. An application once rejected shall not again be voted on until after the expiration of six (6) months.

Non-resident Applicants.

SEC. 3. Each applicant for membership in a local lodge shall be interrogated to ascertain the place from whence he came. If it appears that he is not a resident of the place wherein the local lodge is located, the recording secretary shall communicate with the local lodge of the locality where the applicant was last employed for the purpose of ascertaining the applicant's standing in that community, and the application shall not be voted upon until after a report has been received from the local lodge communicated with.

Initiation Fees.

SEC. 4. The minimum initiation fees for all local lodges shall be as follows: for journeymen machinists, automobile or air craft machinists or mechanics and specialists not less

than five dollars ($5.00); for machinists' helpers and production workers not less than three dollars ($3.00); for apprentices not less than half the fee paid by journeymen machinists throughout the jurisdiction of The International Association of Machinists.

Forfeiture of Fees.

SEC. 5. Any person elected to membership in a local lodge and who fails to appear for initiation within the period of four (4) weeks next following his election shall forfeit all right to be initiated and the fees theretofore paid by him unless a satisfactory reason for his failure to appear is duly received and accepted by the local lodge.

Universal Transfers.

SEC. 6. Any member of a foreign metal trades union or any member of a trade union affiliated with the American Federation of Labor who accepts employment under the jurisdiction of The International Association of Machinists, shall, upon application for membership and the presentation of his due book or other evidence of his good standing membership in such union and upon payment of three months dues in advance, shall be initiated into a local lodge of The International Association of Machinists and invested with full membership therein free of cost. All such due books or other evidence of good standing membership of such an applicant shall be forwarded to the General Secretary-Treasurer, who shall issue a due book of this Association in exchange therefor. Any member of a local lodge who secures employment within the jurisdiction of any other trade union affiliated with the American Federation of Labor and who is thereby required to become a member of such other trade union may retain his membership in a local lodge of The International Association of Machinists by paying such reduced rate of dues as may be stipulated by the local lodge of which he is a member. Such local lodge shall, however, pay full per capita tax to the Grand Lodge on all such members.

271

Obligation by Request.

SEC. 7. A candidate elected in one local lodge may be initiated in another local lodge, but good and sufficient reasons must be given in writing to the local lodge in which the candidate was elected before said lodge can grant permission for his initiation in another lodge. The permission herein referred to shall be in writing, signed by the secretary and president and attested by the seal of the lodge by which he was elected, and addressed to the local lodge wherein he is to be initiated.

Local Lodge Dues.

SEC. 8. The minimum monthly dues to be paid by members of all local lodges shall be as follows: machinists, automobile or aircraft machinists or mechanics and specialists shall pay not less than one dollar and seventy-five cents ($1.75) per month dues, apprentices shall pay not less than one-half (½) rate, helpers and production workers not less than two-thirds (⅔) rate of dues paid by machinists.

Upon payment of dues each member shall receive a due stamp from the financial secretary as a receipt for each month's dues so paid, which stamp shall be affixed in the due book of the member and cancelled by the financial secretary as provided in Section 6 of Article D of this Constitution, and in no case shall the salaries of local lodge officers be paid by due stamps, but all such payments shall be made by cheque.

Misrepresentation.

SEC. 9. Any member of a local lodge who falsely represents himself to be a competent workman shall be fined or expelled at the discretion of the local lodge of which he is a member.

Commencement of Membership.

SEC. 10. When a member is initiated or a person whose membership has been cancelled is reinstated to membership his initiation or reinstatement stamp shall be placed in his

272

due book in the square for the month in which he is initiated or reinstated and his dues shall begin the month following. His good standing membership shall date from the date of his initiation or last reinstatement to membership, the date of which shall be recorded in his due book.

Due Books.

SEC. 11. Every member of a local lodge of The International Association of Machinists shall have a due book, which shall bear a number designated by the Grand Lodge and shall be furnished free of charge by the financial secretary of the lodge of which he is a member. The financial secretary shall purchase all due books from the General Secretary-Treasurer.

Machinist helpers shall be provided with a special due book with the words "Machinist Helper" printed thereon. All due books shall contain spaces for the affixing and cancellation of stamps, forms for the record of the payment of assessments and for noting transfers. Such due books shall contain a blank form for the description and identification of the owner, a blank for his signature, a designation of the branch of the trade in which he is most proficient, and a page containing a statement of Grand Lodge benefits.

The due book when properly stamped and bearing the seal of the local lodge shall serve all purposes for the identification of the owner and shall be received as evidence of his standing in The International Association of Machinists.

Lost Due Books.

SEC. 12. Upon receiving a fee of twenty-five (25) cents and satisfactory proof that the due book of any member has been lost, the financial secretary of the local lodge shall prepare an application for a new due book and forward the same, together with the fee of twenty-five (25) cents to the General Secretary-Treasurer, who, upon receipt therof shall furnish a due book to replace the one so lost.

Transfers.

SEC. 13. Any good standing member of a local lodge may transfer to any other local lodge. No accounting

of arrearage dues shall be required between local lodges, but all district and local lodge assessments then due shall be collected and forwarded to the district or local lodge which levied the assessment. Should a due book be presented for the transfer of a member with one or more month's dues paid in advance, the owner of such book shall be entitled to transfer in regular form and the advanced dues shall remain the property of the lodge of which he was formerly a member. A member presenting his due book as prescribed herein shall at once become a member of the local lodge to which he transfers.

Visiting Members.

SEC. 14. A member of a local lodge upon visiting another local lodge shall be admitted upon passing a satisfactory examination.

Identification Letters Illegal.

SEC. 15. No letter or paper of identification other than the regular due book herein provided for shall be issued by any financial secretary or other officer of a local lodge to any member of such lodge except for the purpose of showing the standing of such member on the books of the local lodge or in reply to an inquiry received from some other local lodge under the seal of such lodge.

When Entitled to Benefits.

SEC. 16. Members of local lodges shall not be entitled to benefits until after being in continuous good standing for a period of three (3) months, nor shall persons whose membership has been cancelled for delinquency or other cause be entitled to benefits until after being in continuous good standing for three (3) months from the date of their last reinstatement to membership in a local lodge, as shown by the Grand Lodge records.

Reinstatement.

SEC. 17. Any person whose membership has been cancelled may be reinstated to membership, but the application for reinstatement must be made to the lodge under whose jurisdiction the applicant is working and the regular reinstatement fee of such lodge must be paid.

If the application for reinstatement is filed in the local lodge wherein the applicant's original membership was cancelled and the application is approved, said lodge shall immediately issue a reinstatement book containing a reinstatement stamp properly cancelled, which transaction shall be entered on the monthly report of said local lodge in the same manner as initiations are entered.

If the application for reinstatement is filed in a local lodge other than that by which the applicant's membership was cancelled, then the application, after having been approved by the local lodge receiving the same, shall be forwarded by the financial secretary of said lodge, together with a fee of two dollars ($2.00), to the General Secretary-Treasurer. Upon receipt of said application the General Secretary-Treasurer will issue a reinstatement book containing a reinstatement stamp properly cancelled, and forward same to the financial secretary of the local lodge from which the application was received, and shall thereupon transfer the reinstated member to such lodge and notify the local lodge wherein the applicant's previous membership was cancelled.

If the membership of the person applying for reinstatement was cancelled for cause other than non-payment of dues, or if there are any unpaid fines, or local, district, or Grand Lodge assessments charged against him, his reinstatement shall not be effected, nor shall his due book be issued until said causes are removed and the fines and assessments are either remitted or paid in full. All applications for reinstatement shall take the usual course, except that it shall require a two-thirds (⅔) vote to reject an application for reinstatement. The foregoing provisions shall not apply to persons whose membership was cancelled in lapsed, suspended, expelled or disbanded lodges. All such persons whose membership has been cancelled shall be reinstated as provided in Section 2, Article J, of this constitution.

Dispensations.

SEC. 18. The Executive Council shall have the authority to grant a special dispensation reducing initiation and reinstatement fees for special cases where organizing activities

are in progress or are contemplated, for such periods of time as may be determined by them.

Rejected Applications and Expulsions.

SEC. 19. Each local lodge shall keep a correct list of all persons whose membership has been cancelled and all applications that have been rejected, for future reference. Expelled persons and rejected applicants can not again apply for membership until after the expiration of six (6) months from the date of said expulsion or rejection.

ARTICLE G.

Apprentices.

SECTION 1. Any person engaging himself to learn the machinist trade shall serve an apprenticeship of four (4) years. Any person engaging himself to learn the automobile or aircraft machinists or mechanics trade shall also serve an apprenticeship of four (4) years. An apprentice shall not leave the employer to whom he has engaged himself without just cause and then only after securing the consent of the lodge of which he is a member. Any apprentice failing to comply with this provision shall stand suspended from any and all benefits of the Grand Lodge and local lodge until he returns to his employer. Failure to return to his employer within three (3) months shall be sufficient cause for his expulsion.

The ratio of apprentices shall be not more than one (1) apprentice for every ten (10) journeymen machinists employed. No person shall engage himself as an apprentice until he has reached the age of sixteen (16) years, and no person shall engage himself as an apprentice after he has reached the age of twenty-one (21) years; except that any person who has been a member of one (1) year's continuous good standing in a local lodge and has worked as a machinist helper for one (1) year in the shop where he desires to become an apprentice, may if he is not at that time past the age of thirty-five (35) years, engage himself to his employer as an apprentice. Such a person shall be known as a "helper-apprentice" and shall serve four (4) years in learning the machinist trade, during

which time he shall be governed by the rules and laws applicable to apprentices. The number of helper-apprentices shall at no time exceed the number of regular indentured apprentices in any shop.

Eligible to Membership

SEC. 2. Any apprentice at the trade is eligible to membership in a local lodge upon paying one-half (½) of the regular initiation fee and one-half (½) of the regular dues charged against machinists in such lodge. He shall thereafter be entitled to benefits at the rate of one-half (½) of the benefits allowed machinists.

SEC. 3. Any machinist's helper who engages himself to an employer as an apprentice shall within five (5) days thereafter present his due book to the financial secretary of a local lodge having jurisdiction over the machinists in the shop wherein he is employed. The financial secretary shall immediately thereafter forward such due book to the General Secretary-Treasurer, who shall re-classify the member as an apprentice and forward to the financial secretary a proper due book in exchange.

Completion of Apprenticeship.

SEC. 4. All apprentices upon the completion of their apprenticeship shall receive not less than the minimum rate of pay for machinists or automobile or aircraft machinists or mechanics in the locality where they are employed and shall thereafter pay full dues and assessments and be entitled to full benefits as members of their respective local lodges.

ARTICLE H.

Duties of Members.

Minimum Rate.

SECTION 1. No member of any local lodge shall be allowed to start to work for wages less than the rate paid to his class. Should any member vacate a position paying more than the minimum rate paid to his class, any other

277

member who takes his place shall receive the same rate within thirty (30) days thereafter.

Going to Work in Other Localities.

SEC. 2. Members of local lodges shall report to the financial secretary, business agent or shop committee before accepting employment within the jurisdiction of any other local lodge. Within five (5) days after commencing work in the new jurisdiction such members shall transfer to the local lodge having jurisdiction over the shop in which he is employed and shall have his tranfer properly recorded in his due book.

Jurisdiction of Lodges.

SEC. 3. In all cities where railroad, contract, automobile, and tool and die makers lodges exist, machinists must become members of the local lodge having jurisdiction over the class of work in which they are employed, provided that said local lodge has a contract or agreement with the employer covering the men claimed.

Declining Rough Work.

SEC. 4. Any member of a local lodge who refuses to do any kind of work belonging to the trade because it is rough or dirty shall be subject to fine or expulsion.

Overtime

SEC. 5. Members of local lodges shall discourage the working of overtime.

Piecework, Two Machines and Premium Systems.

SEC. 6. In shops where it is not now a practice no member of a local lodge is permitted to accept piecework, operate more than one machine, or accept employment under the premium, merit, task, or contract systems. Members found guilty of advocating or encouraging any of these systems in shops where they are not now in operation shall be liable to expulsion.

Advancement of Helpers.

SEC. 7. Any member of a local lodge who introduces into the trade any person other than a member of this

278

Association, shall be heavily fined for the first offense and expelled for the second offense. This section shall not be construed to refer to apprentices properly indentured.

Inebriety.

SEC. 8. Any person entering the local lodge room while under the influence of intoxicating drinks, or who is guilty of using indecent or profane language therein, shall be reprimanded, fined, suspended or expelled, at the option of the local lodge. Habitual drunkenness or conduct disgraceful to himself or associates shall be punished by expulsion.

Honorary Retiring Cards.

SEC. 9. Any member of a local lodge who has been appointed a general foreman or a superintendent or who obtains employment outside of the trade or industry may either be transferred to affiliation directly with the Grand Lodge or may be furnished with an honorary retiring card and thereby become an honorary member of this Association. No application for an honorary retiring card shall be granted until all fines, dues, and assessments charged against the applicant have been paid in full. Persons holding honorary retiring cards shall remain under the jurisdiction of the Grand Lodge and subject to its laws for any violation thereof. All honorary retiring cards shall be furnished by the Grand Lodge, signed by the president and financial secretary, and bear the seal of the local lodge granting the same. Honorary retiring cards shall not be issued to individuals who are actually working in the trade or industry and eligible to active membership in a local lodge, except to those members who have enlisted as machinists in the army, navy or marine corps, and then only upon complying with the conditions herein set forth.

Deposit of Retiring Cards.

SEC. 10. Any person holding an honorary retiring card who again obtains employment within the trade or industry and thereby becomes eligible to active membership, shall, within five (5) days after obtaining such employment, deposit his honorary retiring card with the local lodge having jurisdiction over the place where he is employed

and thereby, become a member of such local lodge. The local lodge receiving the retiring card shall send the same to the General Secretary-Treasurer, who will issue a due book in exchange therefor. Whenever any person holding an honorary retiring card accepts employment within the jurisdiction of the local lodge and fails to deposit the same as herein provided for, the president of such local lodge shall cancel such honorary retiring card and immediately notify the General Secretary-Treasurer of his action.

ARTICLE I.

Assessments.

How Levied.

SECTION 1. In case of emergency local lodges may levy assessments on all members under their jurisdiction. No special assessment can be levied until the same has been approved by a two-thirds (⅔) vote of the members of the local lodge attending a summoned meeting, notice of which has been served in writing on each member, by mail or otherwise, at least seven (7) days before the date of the meeting. Every member present at such meeting shall vote unless excused by the president, and those not voting shall be recorded as voting in favor of the assessment.

SEC. 2. All assessments and fines shall be due within thirty (30) days after levied. If not paid within that time the financial secretary shall notify those in arrears in writing, and should they fail to make payment within sixty (60) days from the date of such written notice, their membership shall be cancelled regardless of the date to which their dues are paid.

ARTICLE J.

Individual Affiliations With the Grand Lodge.

SECTION 1. In localities where there is not a sufficient number of machinists, automobile or aircraft machinists or mechanics, specialists, helpers, apprentices, and production workers employed to organize a local lodge, the Grand Lodge shall issue due books affiliating those eligible to membership directly with the Grand Lodge, as provided for

in Section 1, Article XX, of the Grand Lodge Constitution. Such members may transfer to the nearest local lodge in accordance with the provisions of Section 2, Article H, of the constitution of local lodges. The local lodge receiving such a member shall notify the General Secretary-Treasurer who shall record the transfer.

Grand Lodge Reinstatements.

SEC. 2. All persons whose membership was cancelled in lapsed, expelled, suspended, or disbanded local lodges working in a locality where a local lodge exists may be reinstated by the Grand Lodge upon making application therefor and paying the reinstatement fee charged by the nearest local lodge, which fee shall not be less than five dollars ($5.00). The local lodge shall forward the application for reinstatement together with the Grand Lodge reinstatement fee of $2.00, and the balance of the reinstatement fee, if any, shall belong to the local lodge.

ARTICLE K.

CODE.

SECTION 1. It is the duty of any member of a local lodge who has information of the violation of any provisions of the Constitution of the Grand Lodge or the constitution of local lodges, by any members of the local lodge of which he is a member, to immediately prefer charges in writing against such member by filing same with the president of the local lodge, who shall supply a copy of the same to the member against whom the charges are preferred and turn over the original charges to the committee provided for by the following section:

SEC. 2. Whenever charges have been preferred against a member of a local lodge the president of such lodge shall immediately appoint a committee to investigate the charges, take testimony, and decide upon the guilt or innocense of the one accused. The committee so appointed shall within one week thereafter notify the member against whom the charges have been preferred as to the time and place, when and where, to appear for trial.

SEC. 3. The accused shall have the privilege, either in person or by attorney (the attorney being a member of a

local lodge) to cross-examine all witnesses appearing for the prosecution and present all such evidence as he may deem proper in his own behalf. The committee shall consider all of the evidence in the case and therafter agree upon its verdict of guilty or not guilty. If the verdict be that of guilty the committee shall then consider and agree upon its recommendation of punishment.

SEC. 4. If a member of a local lodge fails to appear for trial when notified so to do, the trial shall proceed as though he were in fact present.

SEC. 5. The trial committee shall report its findings at the next regular meeting of the local lodge. The report of the trial committee shall contain a synopsis of the evidence introduced at the trial together with its verdict. If the verdict is "guilty" the report shall set forth the recommendation of the committee as to the punishment to be imposed.

SEC. 6. Upon receiving the report of the trial committee and after due consideration thereof, the question of the guilt or innocence of the defendant shall be submitted to a vote by secret ballot of the local lodge. If a majority of those voting on the question vote in favor of a verdict of "guilty" then the question of accepting or rejecting the recommendation of the trial committee as to the punishment of the defendant shall be submitted to a vote by secret ballot of the members of the local lodge in attendance. The recommendation of the committee may be amended, rejected, or another punishment substituted therefor by a majority vote of those voting on the question, except that it shall require a two-third (⅔) vote of those voting to expel the defendant from membership.

Limit of Fines.

SEC. 7. No fine shall be imposed upon any member or applicant eligible to membership in this Association in excess of fifty dollars ($50.00) unless the same is first approved by the Executive Council.

Appeals.

SEC. 8. Appeals may be taken from the decision of any local lodge or Grand Lodge Officer to the International

President, and thereafter appeals may be prosecuted in accordance with the provisions of Section 6, of Article XXI of the Grand Lodge Constitution.

Rights of Members and Lodges During Appeal.

SEC. 9. While any member or local lodge is exercising the right of appeal the financial standing of such member or local lodge shall not be impaired by refusal to accept dues or per capita tax until after the Executive Council has passed upon the appeal. Should any member or local lodge decide to appeal from the decision of the Executive Council they must comply with the provisions of Section 6 of Article XXI of the Grand Lodge Constitution. No individual member or local lodge shall appeal to the civil courts for redress until after having exhausted all rights of appeal under the provisions of this Constitution and the Constitution of the Grand Lodge.

Geo. H. Pedersen, *Chairman*,
Geo. E. Wright, *Secretary*,
Louis Strecker,
R. E. Janson,
F. L. Bartlett,
Committee on Law, 1937.

A. O. WHARTON,
International President.

Attest:
E. C. DAVISON,
General Secretary-Treasurer.

BLANK

PAGE

INDEX

A

PAGE

APPEALS
- From a decision of the International President to Executive Council — 48
- From the Executive Council to a convention or referendum — 48
- May be prosecuted in accordance with Section 6, Article XXI — 93
- May be taken to the International President — 92
- Rights of members and lodges during appeals — 93

APPRENTICES
- Age of — 86
- Completion of apprenticeship — 87
- Eligible to membership — 87
- Helper apprentices — 86
- Ratio of apprentices — 86
- Term of apprenticeship — 86

ASSESSMENTS
- DISTRICT LODGE — 38
- GRAND LODGE — 27
  - How levied — 26
- LOCAL LODGE
  - Due after 30 days — 90
  - How levied — 90
  - Requires two-thirds vote — 90
  - Seven days notice must be given — 90

ASSISTANT SECRETARY
- Bond of — 19
- Duties of — 19
- To be appointed by the G. S. T. — 18

AUDITING COMMITTEE
- Audit of Grand Lodge books to be held in January and July — 21
- Auditors to employ a public accountant — 21
- Election of within a radius of ten miles of headquarters — 21
- Report to be published and verified under oath — 21

AUDITORS, GRAND LODGE
- Duties of — 19

B

BALLOTS
- Grand Lodge election — 4
- Invalidated by failure to vote for required number of candidates — 4
- Preparation and description of — 4
- Second in case of tie vote — 8
- Supplied to all lodges by the G. S. T. without cost — 4

BENEFICIARY DEPARTMENT — 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

PAGE

BENEFITS
When entitled to 84
DEATH 29
Absence of relatives 31
Age limit 30
Amount of, based on length of membership 29
For apprentices 30
For helpers 30
For members initiated or reinstated after April 1, 1937 30
For production workers 30
How claimed 29
Proof of death 29
To whom paid 31
SICK 32
STRIKE DONATIONS 27
Arrearages may be deducted from donations 28
Donations may be denied at the discretion of the President and Council 28
Lockout donations 27
Members must receipt for same 28
Method of payment of donations 28
Qualifications to receive donations 27
Victimization donations 27

BONDING DEPARTMENT
All district and local lodge financial officers must be bonded 40
Bonds to run for year 40
Established by Executive Council 40
Report semi-annually by G. S. T 40

BUSINESS AGENTS
Control of 39
Location of activities 40
Qualifications for 39
Reports of 39
Where established 39

C

CANDIDATES
Acceptance or rejection of nomination 4
Certification of by local lodges 4
Endorsement of 3
Filing of endorsements 3
For Committee on Law 2
For Delegates to the A. F. of L 2
For Delegates to the T. & L. Congress 2
For office in the Grand Lodge 2
Notification of by G. S. T 4
Number of 5
Qualification of 2

CHARTERS
Application for 66
Applications from persons whose membership has been cancelled 68

PAGE

Fees for 68
Granting of 67
Restrictions on 67
Who may obtain 67

CODE
Fines limited to $50 92
Guilt or innocence decided by secret ballot 92
Members must prefer charges for violation of Constitution 91
Trial Committee shall hear charges 91
Trial Committee shall report its findings and recommend penalty 92

COMMITTEES
Filing and publication of endorsements 3
Number of nominees 3

ALL CONVENTION COMMITTEES, NOT OTHERWISE PROVIDED FOR, may be appointed by the President and Executive Council 26

CONVENTION COMMITTEE ON RULES to be appointed by President 26

CREDENTIAL, to be composed of the Executive Committee 25
To meet four days before the convention 25
To report its findings upon the eligibility of delegates and the financial standing of local lodges 25

LAW, meeting and report of 49
Compiling of Constitution 50
Elected at same time 2
Nomination of 3
Qualifications of 2
Submission of amendments to the membership 49

RESOLUTION, to be appointed by the International President from qualified delegates 25
Committee to meet three days before convention 25
Committee to report to convention as soon as possible 25

CONSTITUTION, REVISION OF
Amendments to be compiled and printed by G. S. T. and mailed to local lodges 49
Amendments to be sent to G. S. T. 45 days before convention 49
Local lodges to appoint committees to consider amendments 49

CONVENTIONS
Convention city selected by Executive Committee 22
Emergency conventions, how called 22
Method of calling 22
Representation and vote of local lodges 22
Three local lodges in radius of 150 miles, having less than 100 members each, may combine to send delegates 23

D

DECLARATION OF ELECTION
Nominees with the highest vote shall be declared elected by the tellers 8

DEFINITIONS
Apprentice, a 65
Automobile and Aircraft Machinist or Mechanics 64

PAGE

Helper, a 65
Local lodge, a 64
Machinist, a 64
Production worker, a 65
Specialist, a 64

DELEGATES
Filing and publication of endorsements 3
Nomination of 3
Number of nominees 3
Qualification of 2
To A. F. of L. and T. & L. C. of Canada elected at same time 2
To A. F. of L., nomination of 3
To Trades & Labor Congress of Canada 3

DISPENSATIONS
Authority of Executive Council to grant lower initiation and reinstatement fees 85

DISTRICT LODGES
Appointment of tellers 72
Assessments of 38
Authority of 38
Elections by referendum 71
Jurisdiction of defined by Executive Council 37
Jurisdiction over local lodges 37
Representation and revenue 37
Where established 37

DUE BOOKS
Cost of 13
Description of 18
Furnished free of charge 83
Lost 83
Shall bear a number 83
Shall be sole identification 83
To be furnished by the G. S. T. 18

DUES
Due stamps 82
For Grand Lodge affiliation 18
Local lodges 82

DUTIES OF MEMBERS
Advancement of helpers forbidden 88
Declining rough or dirty work 88
Going to work in other localities 88
Inebriety 89
Minimum rates 87
Must transfer membership 88
Overtime 88
Piecework, etc. 88

E

EDITOR
Duties of 20
To have management and supervision of Journal 20

PAGE

ELECTION OF DELEGATES
Grand lodge officers not eligible to serve as delegates 25
Local lodges must report result of election to the G. S. T. 23
New lodges organized not later than June in convention year may elect delegates 23
Qualifications of Delegates 24
The G. S. T. shall rearrange the dates when special conventions are called 24
The G. S. T. shall send list of elected delegates to all local lodges 24
To I. A. of M. Conventions to be held in June 23

ELECTIONS, GRAND LODGE
Ballots by mail to members out of town 5
Due books must be presented and marked 6
Illegal voting punishable by expulsion 6
Inspectors of election to be elected by local lodges 6
Lodges may convene at 8 a. m. 6
Notification of absent members 5
Place of voting 5
Qualifications to vote 5
The G. S. T. must forward ballots to members affiliated with Grand Lodge 6
Time and method of voting 6
Time of voting 5
Voters must sign the ballot 6

EXECUTIVE COUNCIL
Membership of 13
Powers of 13
Reports of 14

EXEMPTION CARDS
Qualifications for 31

EXPENSES
Delegates to the A. F. of L. of 41
Delegates to the Trades & Labor Congress of Canada of 41
Grand Lodge Auditors of 41
Grand Lodge Officers of 41
Grand Lodge Representatives of 41
Law committee of 41
Of delegates to conventions 25
Of Resolution Committee 26

G

GENERAL SECRETARY-TREASURER
Duties of 16
Receipt of funds 16
Shall collect per capita tax from local lodges 17
Shall deposit all funds in approved bank 17
Shall issue monthly financial report and review statement to all local lodges 16
Shall keep book account with each local lodge 16
Shall place all income from investments in emergency fund 17

289

PAGE

GRAND LODGE
Authority to determine customs and usages 1
Government between conventions invested in 1
Membership and jurisdiction of 1
Name and location of 1
Officers, how chosen 2
Officers of 2
Officers, qualifications of 2
Power to grant charters 1
Supervision over local and district lodges 1

GRAND LODGE OFFICERS
Filing and publication of endorsements 3
Nomination of 3
Number of nominees 3

GRAND LODGE REPRESENTATIVES
Qualifications of 21

H

HOLD NO OTHER OFFICE
Grand Lodge Officers, District lodge officers, Local lodge officers, who are fully employed by the association shall hold no other office 41

I

IDENTIFICATION LETTERS
No letters or other papers of identification shall be issued 84

IMPROPER CONDUCT
Charges against members in writing 47
Definition of 47
Encouraging secession 47
Failure to bring to trial or punish 47
Members expelled for 47
Trial under Code 47

INDIVIDUAL AFFILIATION, GRAND LODGE
Granted where not enough members to form a lodge 90

INDIVIDUAL AFFILIATIONS
Conditions of 46
Direct with Grand Lodge 46
Fees and dues 46

INITIATION AND REINSTATEMENT FEES TO GRAND LODGE
For apprentices 18
For helpers 18
For journeymen 18
For production workers 18
For specialists 18
On Grand Lodge affiliations 18

INITIATION FEES
Fees, forfeiture of 81
Local lodge 80

PAGE

INSTALLATION
Grand Lodge Officers ... 9

INTERNATIONAL PRESIDENT
Appoint Grand Lodge Representatives and assign their duties ... 11
Duties of ... 11
Provide literature ... 11
Shall appoint all temporary officers and committees ... 12
Shall assign the Vice Presidents to specific territories ... 11
Shall be Chief Organizer ... 11
Shall countersign all financial orders ... 11
Shall decide all constitutional questions ... 11
Shall have supervision of local and district lodges ... 12
Shall have tie vote ... 11
Shall make annual report ... 12

INVESTMENT OF FUNDS
Executive Council to have full control of funds ... 14
May invest same ... 14
May negotiate loans ... 14
May sell securities ... 14
May withdraw same ... 14
Funds of the Grand Lodge may only be invested in trustee securities ... 15

L

LOCAL LODGE CONSTITUTION
By-laws ... 46
How amended ... 46
To be approved by Grand Lodge ... 46

LOCAL LODGES
By-laws of ... 68
Control over property by Grand Lodge ... 70
Meetings and quorums ... 68
Merged lodges funds of ... 70
Order of business ... 69
Organization of ... 65
Parliamentary laws ... 68
Seal, illegal use of ... 70
Seal of ... 69

LOCAL LODGES, DUTIES OF
Co-operation of lodges ... 79
Discussion of economics ... 78
Donations, voluntary ... 79
Emergency funds ... 79
Legislative committee ... 78
Minimum wage scale to be established ... 78
Relief committee ... 78

M

MEMBERSHIP
Applicants non-resident ... 80
Applications for ... 80

PAGE

Commencement of 82
Eligibility 79

MEMBERSHIP CANCELLED
For delinquency 33
Good standing dates from last reinstatement 32

MISREPRESENTATION
As to ability or competence 62

MONTHLY JOURNAL
Contents of 20
Finances of 20
Publication of 19
Subscription to 20

O

OFFICERS, LOCAL LODGES
Election of 72
Election of by referendum 71
Installation of 72
Number and titles of officers 70
Qualifications of 71
Terms of 71

OFFICERS LOCAL LODGES, DUTIES OF
Auditors 76
Conductor 76
Financial secretary 73
Past-president and statistician 76
President 72
Recording secretary 73
Sentinel 76
Treasurer 76
Trustees 77
Vice president 73

P

PARLIAMENTARY LAWS
Roberts' Rules of Order, except as otherwise provided in the Constitution, shall govern procedure at conventions 26

PER CAPITA TAX
Changes in 45
District 75
For apprentices 18
For helpers and production workers 18
For journeymen and specialists 18
To be collected by G. S. T. 17

R

RECALL PROVISIONS
Duties of the G. S. T. in connection therewith 10
Local lodges may institute recall of any Grand Lodge Officer 9

292

PAGE

Number of endorsements required 9
Officer whose recall is sought shall, if qualified, have his name on the ballot 10
Petition for recall must contain specific charges 9

REFERENDUM
Definition of 42
Fines for neglect 44
Form of amendments 43
How invoked 42
Law Committee, special meeting of 44
Method of voting and returns 43
Publication of amendments 43
Publication of votes and amendments 44
Re-submission 45
When in effect 45

REINSTATEMENTS
All fines and assessments to be paid in full 85
Applications for 84
By Grand Lodge 91
Conditions of reinstatement 91
Dispensations by Executive Council 85
Fees for reinstatement 91
Fees to Grand Lodge 85
Stamps 85
Who may be reinstated 91

REPRESENTATION AT COUNT
Candidates for the Presidency may select two tellers 7
The tellers shall employ a public accountant 7
The tellers shall have full charge of the count and shall render a full report of the vote of each lodge 8

RETIRING CARDS
All fines and assessments must be paid 89
Deposit of 89
Furnished by Grand Lodge 89
Qualification for 89

REVENUES OF THE GRAND LODGE
How derived 26

S

SALARY
Changes in 45
Of Assistant Secretary 19
Of Auditing Committee 21
Of Grand Lodge Auditors 19
Of Grand Lodge Representatives 21
Of International President 13
Of Law Committee 50
Of the Editor of the Journal 21
Of the General Secretary-Treasurer 19
Of Resolutions Committee 26
Of Vice Presidents 15

293

	Page
STRIKES	
Authorization of	34
Decide by secret ballot	34
Declaring off	36
Discontinuance of grievance	35
Financing	36
Handling unfair work	36
Method of declaring	34
Sanction must be obtained	35
Statement of grievance to be sent Grand Lodge	35
Strike stamps	23 35
Submitted to Executive Council	35
T	
TABULATION OF VOTES	
Inspectors of election must tabulate the vote	7
Perforated register slips must be retained for ninety days and surrendered to Grand Lodge Tellers if required	7
Tally sheet and ballots must be sent to the G. S. T. in special containers	7
TELLERS GRAND LODGE ELECTION	
Duties of	8
Report of	8
Salary and expenses of	8
TRANSFERS	74
Assessments due must be collected	84
Members may transfer to any other lodge	83
Obligation by request	82
Universal	81
U	
UNEMPLOYMENT STAMPS	
Conditions of issue	33
Cost of	18
Must register name weekly	32
Qualification for	32
V	
VACANCIES IN GRAND LODGE OFFICES	
How filled	9
VICE PRESIDENTS	
Duties of	15
Salaries of	15
Shall file report and expense account with the President weekly	15
VISITING MEMBERS	84

LOOK FOR THIS CARD IN AUTOMOBILE GARAGES
AND CONTRACT MACHINE SHOPS

Shops displaying this card are entitled to your cooperative support

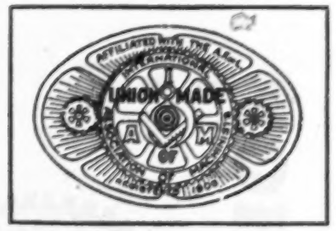
UNION SHOP

The Card is the property of and is issued by authority of the International Association of Machinists and remains in force only while the Shop is in good standing with the Local Lodge and the International Association.

G. M. Bugniazet
GRAND PRESIDENT

INTERNATIONAL ASSOCIATION OF MACHINISTS
AFFILIATED WITH THE A. F. OF L.

Allen Brown
GRAND SECRETARY



UNION LABEL

of the

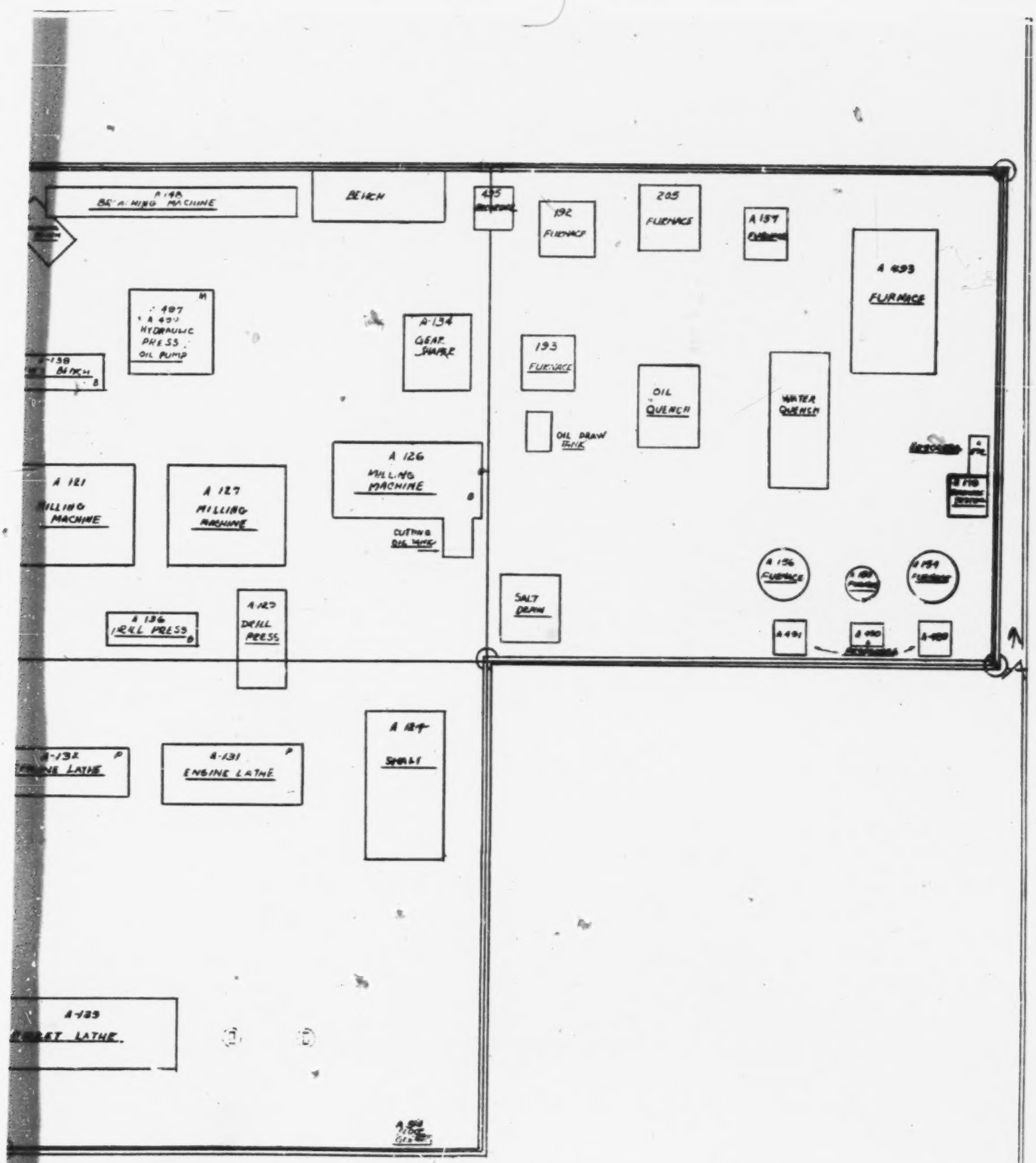
INTERNATIONAL ASSOCIATION OF MACHINISTS

All articles upon which this label appears are manufactured by members of the International Association of Machinists.

TOOL ROOM

N

BENCH
BENCH
BENCH


A 148
BROACHING MACHINE
BENCH
435
192
FURNACE
205
FURNACE
A 137
A 493
FURNACE
A 497
A 499
HYDRAULIC
PRESS
OIL PUMP
A-134
GEAR
SHAPER
193
FURNACE
OIL
QUENCH
WATER
QUENCH
OIL DRAW
TANK
A 126
MILLING
MACHINE
CUTTING
OIL TANK
A 121
MILLING
MACHINE
A 127
MILLING
MACHINE
A 136
FURNACE
SALT
DRAW
A 136
DRILL PRESS
A 127
DRILL
PRESS
A 491
A 490
A-489
A-132
ENGINE LATHE
A-131
ENGINE LATHE
A 129
SHAPER
A-133
LATHE

SALT DRAW

BENCH
BENCH
BENCH
BENCH
BENCH
BENCH

198 GRINDER

A-145 EXTENSION GRINDER

A-146 CENTERING HEAD

A-143 UNIVERSAL GRINDER

A-147 INTERNAL GRINDER

202 GRINDER

A-140 CUTTER GRINDING ATTACHMENT

A-177 TOOL GRINDER

171 BENCH LATHE

169 SURFACE GRINDER

180 SURFACE GRINDER

A-141 SURFACE GRINDER

196 SURFACE GRINDER

195 SURFACE GRINDER

A-142 SURFACE GRINDER

A-141 SURFACE GRINDER

SURFACE

A-120 VERTICAL DRILL

A-139 GRINDING ATTACHMENT

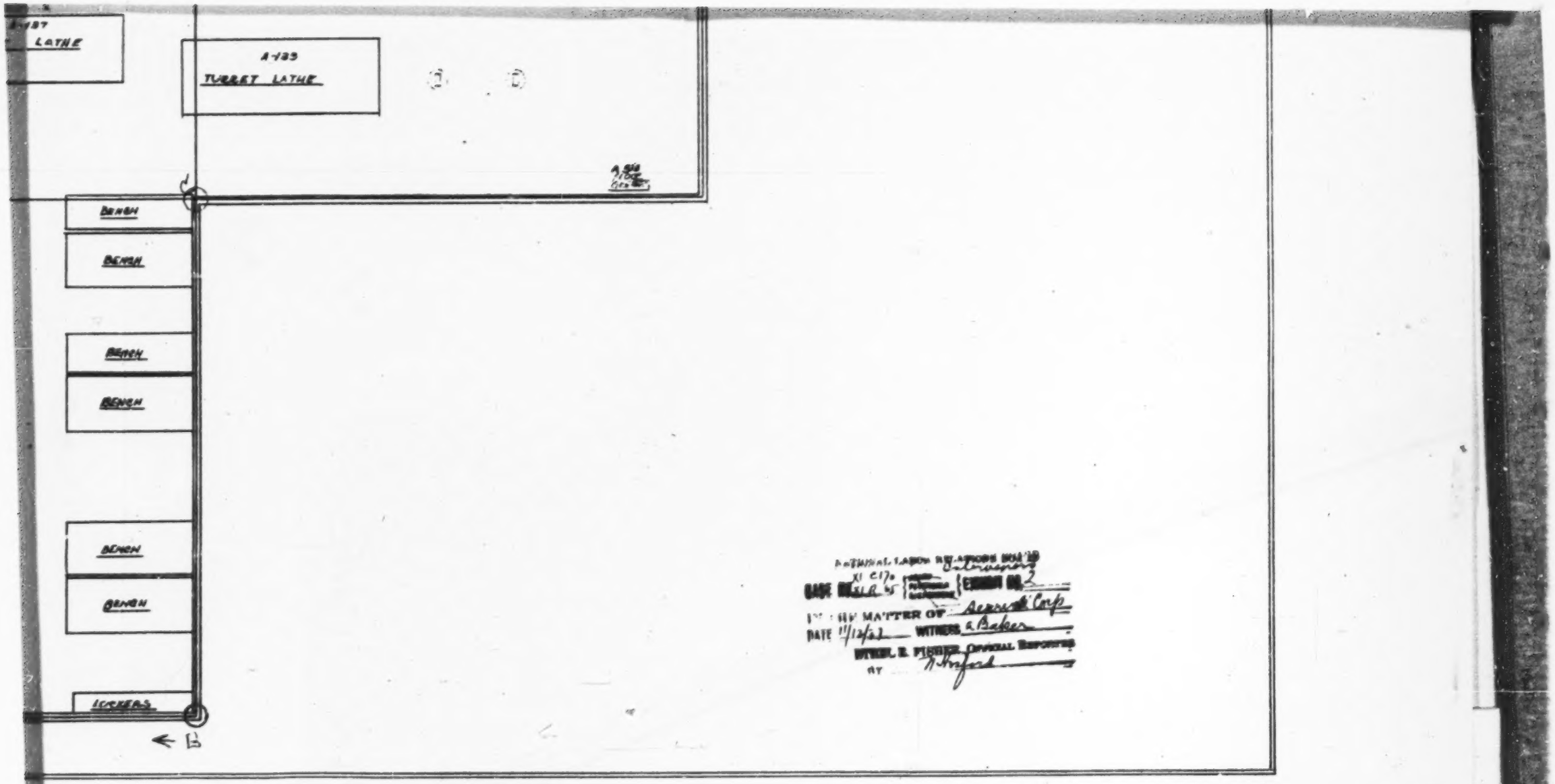
A-149 DISC-GRINDER

REPAIR DEPT.

BENCH
BENCH
BENCH
BENCH
BENCH
BENCH

LOCKERS

2nd Floor K 2 of



NATIONAL LABOR RELATIONS BOARD
Intervenor
CASE NO. XI C170 | EXHIBIT NO. 3
IN THE MATTER OF Aeroweld Corp
DATE 11/12/41 WITNESS A Baker
OTHEL B. FISHER, OFFICIAL REPORTER
BY J Stafford

BLANK PAGE

[fol. 641] BEFORE THE NATIONAL LABOR RELATIONS BOARD

ELEVENTH REGION

Case No. XI-C-170

In the Matter of THE SERRICK CORPORATION and INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL No. 459

INTERMEDIATE REPORT

Upon charges duly made and acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act, Robert H. Cowdrill, agent of the National Labor Relations Board, hereinafter called the Board, acting pursuant to its Rules and Regulations—Series 1, as amended, Article IV, Section 1, issued its complaint, dated October 5, 1937, against The Serrick Corporation, the respondent herein. The complaint and notice of hearing were duly served on the respondent, the complaining union (hereinafter referred to as Local No. 459), the International Association of Machinists, Acme-Lees Welfare Association, Inc., and International Molders Union of North America, on October 5 and 6, 1937.

For the purposes of the hearing, the present proceeding was combined with Case No. XI-R-65, which was instituted by a petition brought by Local No. 459 pursuant to Section 9(c) of the Act. Prior to the hearing, the International [fol. 642] Association of Machinists filed a motion to intervene in Case No. XI-R-65 with the Regional Director for the Eleventh Region, which motion was granted by the said Regional Director. Thereafter the said International Association of Machinists was represented at the hearing and participated, as its interests required, in both Case No. XI-R-65 and the present proceeding. Although it does not appear that any written motion to intervene in the instant proceeding was ever filed by the International Association of Machinists, no objection was made by any party to such participation.

Pursuant to the notice of hearing, the undersigned, as Trial Examiner for the Board designated to conduct hearings in this case, conducted a hearing at Muncie, Indiana, beginning on October 18, 1937, and ending on November 15, 1937. The respondent, Local No. 459 and, as stated, the International Association of Machinists appeared by coun-

sel or a representative and participated in the hearing. Full opportunity to be heard, to cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to the parties.

Motions to amend the charge, the complaint and the respondent's answer were made and allowed at various times throughout the hearing.[1] The complaint, in its final form, has been marked as Board's Exhibit 35. Certain motions made by the respondent to strike out parts of the complaint, to make the amended charge and the second amended charge more definite, and to reject certain amendments to the complaint were denied at the hearing.[2] Early in the hearing respondent filed with the Trial Examiner an application for subpoenas for various international officers of the International Union, United Automobile Workers of America, for the chief of police and chief of detectives of the City of Detroit, Michigan, and for the sheriff of Genesee County, Michigan (Board's Exhibit 1-T). The testimony of these persons was sought to support the allegations contained in paragraph 14 of its answer. At the same time Local No. 459 moved to strike the allegations of said paragraph 14 [fol. 643] from the respondent's answer (Board's Exhibit 1-U). After consideration the Trial Examiner concluded that the testimony which respondent sought to obtain could not be properly heard in the present proceeding. He therefore allowed the motion of Local No. 459 and stated that he would not forward to the Board respondent's application for subpoenas since, in the light of his ruling, the witnesses, if present, would not be permitted to testify as sought by respondent.

The International Association of Machinists moved at the close of the hearing to dismiss the complaint, as amended, as to paragraphs 4a, 5, 6, and 6a (Intervenor's Exhibit 6). This motion, which was taken under advisement at the hearing, is dealt with as indicated below. Other motions were made from time to time during the hearing and were disposed of as shown by the record. These in-

---

[1] These motions have been marked as Board's Exhibits 1-W, 1-Y, 26, 28 and 32. Respondent's motion to amend its answer is set forth at p. 3079 of the record.

[2] These motions have been marked as Board's Exhibits 1-M, 1-N, 1-X, and 1-Z.

BLANK PAGE

BLANK PAGE

cluded a motion by Local No. 459 to amend the name of the complaining union as it appeared in the complaint and other pleadings to "International Union, United Automobile Workers of America, Local No. 459."

The complaint, as amended, alleged in substance as follows:

Respondent, a corporation organized and existing under the laws of the State of Ohio, authorized to do business in the State of Indiana, is now and has been continuously engaged at its plant in the City of Muncie, Indiana, in the manufacture and sale of automobile moldings, refrigerator parts, screws and bolts, stenotype machines, and allied products. In the course of its business respondent causes substantially all of the raw materials used by it and substantially all of the finished products manufactured by it to be sold and transported in interstate commerce.

Respondent, on stated dates in June, July, August and September, 1937, terminated the employment of 35 of its employees because of their activity in and on behalf of Local No. 459. It is also alleged that these employees were discharged because of their refusal to join the International Association of Machinists, Tool and Die Makers Local Number 35.

Respondent has since July 5, 1935, interfered with and dominated a labor organization of its employees known as the Acme Welfare Association and has contributed financial and other support to it.

[fol. 644] Respondent at various times since April 1, 1937, has attempted to discourage the affiliation of its employees with Local No. 459.

Local No. 459 is a labor organization within the meaning of the Act. The production employees of the respondent, excepting buffers, metal polishers, foremen, supervisory officials, and office employees of a clerical nature, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act. At all times since August 1, 1937, Local No. 459 has been the exclusive representative of all of the employees within said unit for the purposes of collective bargaining. On or about August 10, 1937, and at all times thereafter respondent refused to bargain collectively with Local No. 459.

By the foregoing conduct, respondent has committed unfair labor practices within the meaning of Section 8, sub-

divisions (1), (2), (3) and (5) of the Act which have a close, intimate and substantial relation to traffic, trade and commerce among the several States, and lead and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Respondent's answer,[3] as amended, in substance admitted its corporate existence and that it was engaged in interstate commerce, as alleged by the complaint, at its plant in Muncie, Indiana. The answer, although admitting the discharge of certain employees and the temporary laying off of others denied in each case that such action violated the Act. It also alleged that the discharge of 18 of its employees named in paragraph 5 of the complaint, was due to the refusal of such employees to comply with the terms of a closed shop agreement entered into with the International Association of Machinists, Tool and Die Makers Local No. 35. The answer denied substantially all of the remaining allegations of the complaint.

Upon the record as thus made, the stenographic report of the hearing and all the evidence, including oral testimony and documentary and other evidence received at the hearing, the undersigned makes, in addition to the above, the following specific findings of fact:

[fol. 645] FINDINGS OF FACT

I. The Respondent

1. Respondent is a corporation organized and existing under the laws of the State of Ohio, with authorization to do business in the State of Indiana. In November 1936 respondent acquired the assets and business of the Acme Machine Products Company, of Muncie, Indiana, and in January 1937 acquired the assets and business of the John Lees Company, of Indianapolis, Indiana, which it moved to Muncie and has since operated in conjunction with the business of the former Acme Machine Products Company in the manufacture and sale of screws and bolts, automobile moldings, refrigerator parts, stenotype machines and allied products. Screws and bolts are manufactured in the so-called Acme division of the plant and the remaining prod-

[3] Paragraph 14 of the answer was deleted pursuant to the motion which has already been discussed.

ucts are manufactured in the so-called John Lees division. Respondent operates one other plant, at Defiance, Ohio. This case concerns only the Muncie plant.

II. The Alleged Unfair Labor Practices

A. The Acme Welfare Association

2. No labor organization with national affiliations had been active among the employees of the old Acme Machine Products Company, in Muncie, or the employees of the John Lees Company, in Indianapolis. Prior to November 1936 there had existed in Muncie an organization known as the Acme Welfare Association. This was continued after respondent took over the Muncie plant and merged with it the business of the John Lees Company, in the early part of 1937. At this time the Acme Welfare Association (hereinafter called the Association) served the employees by sending flowers and lending money to sick persons, sponsoring athletic teams and other activities of this nature. It also operated the cafeteria, which is located within or adjoining the plant, on respondent's property. Prior to 1937 the Acme Machine Products Company had deducted ten cents a week from its employees' wages as a contribution to the funds of the Association, and this practice was continued after respondent took over the plant. John D. Lewis, respondent's employment manager, served as president of [fol. 646] the Association for several months in 1937. On the entire record, there can be no doubt but what respondent has sponsored, dominated and supported the Association and is continuing to support the Association's successor, as set forth below. Prior to February 1937, however, apparently no real effort was made to transform the Association into a labor organization within the meaning of the Act.

3. In the spring of 1937 "outside" labor organizations gained a foothold among respondent's employees. In March 1937 respondent executed a contract covering the buffers and polishers with the Metal Polishers, Buffers, Platers & Helpers International Union, Local No. 53, affiliated with the American Federation of Labor (Respondent's Exhibit 4). On August 14, 1937, this contract was amended to provide for a closed shop (Respondent's Exhibit 5). It should be noted at this point that this contract, as amended,

is not challenged by any party. In May 1937 Local No. 459 was organized, as described below, and steadily gained strength during the succeeding months. In an effort to meet the threat of outside organizations, respondent in the spring of 1937 began a sustained attempt to convert the Association into a labor organization.

4. Evidences of respondent's campaign came as early as February, when Poole, then general manager of the plant, and Lewis addressed an evening meeting of the Association held outside the plant. They stressed that no outside labor organization was needed since committee members, to be elected by the Association, could mediate all grievances with the management. Lewis made similar speeches at later meetings of the Association, including a meeting held during the first part of June in the form of a "beer party" for between 200 and 300 women employees. At this meeting Lewis, in the course of a speech addressed particularly against the C. I. O., called for two rising votes, one as to whether the C. I. O. should be kept out and another as to whether the Association should be continued. In this speech Lewis referred to friends of his who had been "misled" by the C. I. O.

5. Following the February meeting committee members were elected from among the employees. In the early part of June, under Lewis' guidance, an abortive organization [fol. 647] campaign was conducted in an effort to "sign up" the employees. Cards were passed out by Lewis to several employees with directions to solicit their fellow employees during working hours. Sharpe, who was a member of the committee from the tool room, obtained permission from his foreman, McCoy, before soliciting in that department. McCoy told Sharpe that something must be done and that if the C. I. O. got into the plant the place would go to hell. At a meeting of the committee held in June or early July, Lewis stated that the C. I. O. must be beaten and that he had "spotters" at C. I. O. meetings.

6. In September 1937 the Association was incorporated under the laws of Indiana as the Acme-Lees Welfare Association, Inc. The Articles of Incorporation (Respondent's Exhibit 18) recite that the corporation "shall not have the right to bargain with any employer relative to wages, hours

or working conditions for its members and shall not in any way be or become any kind of a Union whatsoever." It appears that since about the first of August respondent has discontinued its efforts to use the Association as a weapon against labor organizations among its employees. That the respondent was unsuccessful in its efforts to convert the Association into a labor organization within the meaning of the Act does not, however, make its conduct any the less a violation of the Act. Although respondent's conduct with respect to the Association does not bring it within the language of Section 8, subdivision (2) of the Act, the finding is required that respondent, by attempting to convert the Association into a labor organization, has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has thereby engaged in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

7. Additional violations of Section 8, subdivision (1) of the Act are to be found in the circular which respondent distributed to its employees on or about August 15, 1937 (Board's Exhibit 16), in further statements of its supervisory employees expressing hostility towards Local No. 459 (see paragraph 14 below), and also in some actual solicitation by respondent's supervisory employees for labor organizations other than Local No. 459. In view of respondent's hostility, the circular referred to was obviously di- [fol. 648] rected at Local No. 459 and, after warning the employees to beware of promises of higher wages and other benefits which could not be fulfilled, concluded with the following two paragraphs:

"You may be definitely assured we will not at this time, or at any time in the future enter into any agreement, written or verbal, with irresponsible organizations, or associations. There is no place in our picture for groups whose only method of securing desired results is by the use of lawlessness, violation of property rights, or violence of any kind, and we will not operate this plant if any of those conditions prevail.

"It would be our suggestion in order to promote peace and cooperation that if any of our employees have any grievances they present them in person, or as a group, to the management, and every effort will be made to adjust any differences to the satisfaction of everyone concerned.

It is our desire to cooperate with our employees in every possible way, but in return we expect cooperation from them to the end that this company may continue to grow and furnish a means of livelihood to an increasing number of people.

Acme-Lees Division, The Serrick Corporation,
(Signed) S. D. Murphy, Vice President."

B. The Closed Shop Contract, Dated August 6, 1937

8. Local No. 459 is a labor organization within the meaning of Section 2 (5) of the Act. Following an organization meeting on May 28, 1937, the strength of Local No. 459 increased rapidly. On Tuesday, August 10, Clark, an organizer, and Collins, an employee, met with Westlund, respondent's works manager, Lewis and Stillwagon, the plant superintendent. Clark and Collins told them that Local No. 459 represented a majority of all of the employees and wished to negotiate an agreement with respondent. They left with Westlund a form of contract, and Clark said they would expect to hear from respondent within a week. It appears to have been understood at this conference and during the subsequent negotiations that the buffers and [fol. 649] polishers were excluded from consideration. The testimony is not clear whether the tool room situation was separately discussed. It is clear, however, that Local No. 459 claimed the tool room as a part of the plant-wide bargaining unit for which it sought to speak.

9. Before respondent had given Local No. 459 any answer regarding its proposed contract, announcement was made the next day, Wednesday, August 11, of the signing of a closed shop agreement, covering the tool room, between respondent and the International Association of Machinists, Tool and Die Makers, Lodge No. 35 (hereinafter called Lodge No. 35). Lodge No. 35 is also a labor organization within the meaning of Section 2(5) of the Act. Notice of this contract, which was given to the employees in the tool room but not directly to Clark or Collins, caused the members of Local No. 459 not unnaturally to believe that this was a step taken by respondent in bad faith in an effort to escape its obligations to bargain with Local No. 459. The complaint, as amended, lists 18 tool room employees who were allegedly discharged in violation of Section 8 (3) of the Act on or about August 13, 1937. The evidence clearly

shows that such employees were discharged and that the reason was their refusal to join Lodge No. 35 pursuant to the closed shop agreement. Respondent contends that this contract is a valid defense. There is therefore squarely raised the issue of the validity of this closed shop contract under the proviso to Section 8(3) of the Act.

10. A number of factors, including the conduct of respondent referred to under A above and evidence of solicitation in the tool room during working hours, are to be considered in determining the validity of this contract. Before evaluating such factors, however, it is necessary to summarize the events leading up to the execution of the contract.

11. On July 28, 1937, a group of tool room employees, having determined by a "straw vote" that a majority of the employees in the tool room did not want to join Local No. 459 but wished to join a union affiliated with the American Federation of Labor, chose one of their number to get in touch with McDonald, organizer for the International Association of Machinists. Informed of the situation, McDonald arranged for a meeting of the tool room employees [fol. 650] that same evening in the City Hall. At this meeting 34 of the tool room employees signed application cards for membership in the International Association of Machinists. A stipulation (Board's Exhibit 34) also shows that as of August 6 and 10, 1937, 35 of the tool room employees had signed such cards, not including two employees who had also signed application cards for membership in Local No. 459. Since there were at this time 63 persons employed in the tool room, it will be seen that as early as July 28 the International Association of Machinists had secured a majority, and, furthermore, that these 34 application cards signed in July were not secured during working hours in the plant.

12. On August 3, McDonald conferred with Westlund and presented a form of contract to him. McDonald said that this organization had a majority in the tool room and stated at some length why the tool room should be considered as a separate unit for the purposes of collective bargaining. The form of contract provided for a basic 40-hour week, a closed shop and minimum hourly rates for each class of employee within the tool room. Although several employees received wage increases under the contract as signed, it appears that the question of wage rates was never

considered by the parties to be difficult of adjustment if agreement could be reached on the other points. Within two or three days after August 3 a member of Lodge No. 35 gave to Westlund a list of the members in the tool room (Board's Exhibit 29). Following additional conferences, Murphy, the general manager, discussed the proposed contract with Serrick, respondent's president, in New York, and on August 6 wired Westlund that the contract was "satisfactory except forty hours make it forty four" (Respondent's Exhibit 2). Lodge No. 35 was informed of this telegram and at a meeting held that night voted to accept the agreement with the 44-hour week. Respondent was informed of this action the next day. A written contract, bearing the date of August 6, 1937, was then signed by the parties on the morning of Wednesday, August 11, as soon as Murphy had returned to Muncie (Respondent's Exhibit 3).

13. Following the acceptance of the agreement by Lodge No. 35 on the evening of August 6, there was undoubtedly [fol. 651] much discussion of the closed shop provision in the tool room during working hours. This increased during the week of August 9, particularly after the actual signing of the contract. Respondent left it to the members of Lodge No. 35 to explain to the remaining employees the nature of the new agreement. This caused a great deal of confusion which the management could readily have avoided. In the judgment of the Trial Examiner, however, the activities of members of Lodge No. 35 subsequent to August 6 stand on a different footing than the ordinary case of solicitation during working hours, for at this time agreement for a closed shop contract had already been reached. It is significant that very little, if any, of the testimony given by the Board's witnesses positively placed the solicitation conducted by the members of Lodge No. 35 prior to August 6. While some discussion and solicitation on behalf of Lodge No. 35 probably occurred prior to this time, it is also significant that several of the witnesses called by Lodge No. 35 testified that they had been solicited for Local No. 459 during working hours in the tool room. This testimony serves to dispel the inference that respondent supported Lodge No. 35 in any solicitation in its behalf, at least prior to August 7.

14. In addition to the testimony summarized under A above, the Board introduced evidence of statements made by supervisory employees which were hostile to the C. I. O. and friendly to the A. F. of L. The finding is required that Lewis, speaking to two of the tool room employees on August 6, asked them why they did not join the A. F. of L. and said that they should straighten things out and have only one organization. The finding is also required that Sheimer, the night superintendent, told an employee on or about July 26 that the foreman, in substance, would discriminate against members of the C. I. O., and that Serrick would recognize the A. F. of L. but not the C. I. O. There was sharply disputed testimony as to whether the employees who were leaders in Lodge No. 35 had ever said that when the C. I. O. threat had passed, the closed shop contract could be torn up, and in the judgment of the Trial Examiner the evidence does not warrant a finding that any such statement was made. From all the evidence it is apparent that the first *impetus* for the organization of Lodge [fol. 652] No. 35 did come from the unwillingness of a majority of the tool room employees to go along with the C. I. O. It is doubtless also true that respondent preferred to deal with Lodge No. 35 rather than with Local No. 459. The evidence does not justify a finding, however, that such unwillingness was instilled in the tool room employees by the respondent.

15. The question remains whether the tool room employees constitute an "appropriate collective bargaining unit" within the meaning of the proviso to Section 8(3) of the Act. The evidence requires the conclusion that they do. The tool room employees prepare tools and dies for use in both the so-called Acme and Lees divisions of the plant. Although respondent's accounting for the two divisions is kept separately, and some of the tool room employees are considered to be Acme employees and the balance Lees employees, they all work within the same enclosed area, which is located in about the center of the plant. Tool room workers are the most highly skilled employees hired by respondent and receive correspondingly higher wages than the other employees.

16. On the basis of the foregoing findings and on all the evidence, the Trial Examiner concludes that the above-

described closed shop contract dated August 6, 1937, is a valid defense[4] to the allegations of the complaint, as amended, that on or about August 13, 1937, respondent discharged the 18 persons listed in paragraph 5 thereof, in violation of Section 8(3) of the Act.

C. The Alleged Violation of Section 8(5) of the Act

17. The complaint, as amended, alleges that a unit appropriate for the purposes of collective bargaining would include the tool and die makers with the large plant-wide unit. In other respects there appears to be no disagreement between Local No. 459 and the International Association of Machinists as to the classes of employees to be included in the principal bargaining unit. In addition to Local No. 459, the International Association of Machinists, Production Lodge No. 1200 (hereinafter called Lodge No. 1200) has [fol. 653] members among the regular production workers, outside of the tool room and polishing and buffing department. Lodge No. 1200 is a labor organization within the meaning of Section 2(5) of the Act. Respondent contended that the Acme and Lees divisions of the plant should each constitute a separate bargaining unit, excluding the tool room and the buffers and polishers. Neither Local No. 459 nor Lodge No. 1200 approves of such a division, however, and the fact that respondent itself did not insist on such a division when negotiating a contract for the tool room goes far to refute this contention. On all the evidence, the Trial Examiner finds that respondent's production employees at its Muncie plant, excluding tool room employees, polishers and buffers, office workers, draftsmen, and supervisory employees, but including receiving, stock room, wrapping, shipping and maintenance employees, would constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Respondent's Exhibit 20 indicates that as of October 15, 1937, there were approximately 673 employees within the bargaining unit here described.

---

[4] Respondent's Exhibit 16 is a copy of the opinion of the Supreme Court of Indiana in the case of Scofes v. Helmar, 205 Indiana 596 (1933). This case indicates that so-called closed shop contracts are valid under the laws of Indiana.

18. The stipulation which has been referred to (Board's Exhibit 34) shows that as of August 10, 1937, a majority of the employees in the unit set forth in paragraph 17 had signed cards, similar to Petitioning Union's Exhibit No. 1, applying for membership in Local No. 459. This stipulation further shows that as of October 15, 1937, out of approximately 673 employees in the said unit on that date, 371 had signed cards applying for membership in Local No. 459 and 298 had signed cards applying for membership in Lodge No. 1200, and that included in these figures are 91 employees who had signed membership cards in both organizations.

19. The Board introduced extensive evidence in an attempt to establish that on August 10, 1937, and thereafter respondent refused to bargain with Local No. 459 as required by Section 8(5) of the Act. Following the preliminary meeting of August 10 between Clark, Collins, Westlund, Lewis and Stillwagon, as described in paragraph 8 above, conferences were begun on August 17. Because of dissatisfaction with the result of these conferences and the failure of the parties to agree on the conditions of an elec-[fol. 654] tion, among other reasons, Local No. 459 called a strike on the evening of August 25, which effectively closed the plant. The strike was thereafter "suspended pending an election to be held at such time and place as the Labor Relations Board may determine" pursuant to an agreement made by respondent and Local No. 459 under the auspices of Judge Guthrie of the Delaware County Circuit Court (Board's Exhibit 18). During the succeeding weeks Judge Guthrie cooperated fully with the parties in an effort to enable them to compose their differences. The agreement, dated September 3, 1937, also provided that respondent should meet with the representatives of Local No. 459 for the purpose of negotiating a contract between respondent and the "members" of Local No. 459. After the reopening of the plant representatives of Local No. 459 met with officials of the respondent several times in an effort to arrive at a written agreement. On or about September 29, 1937, these negotiations broke down because respondent was unwilling to increase further the wage rates provided in the second of its counter-proposals. The evidence does not warrant a finding that the respondent was not at this time bargaining in good faith in an honest effort to meet an

agreement. In any event, it would appear that the bargaining which occurred subsequent to the strike was not the collective bargaining contemplated by the Act, since the respondent did not recognize Local No. 459 as the exclusive bargaining agent for its regular production workers. If respondent violated Section 8(5) of the Act it was by its refusal to recognize Local No. 459 as such exclusive bargaining agent, which first occurred prior to the strike.

20. The Trial Examiner has carefully reviewed the evidence as to the conferences which occurred between September 17 and 24, inclusive. Although the matter is not entirely free from doubt,[5] the evidence does not warrant a finding that the respondent unlawfully refused to grant Local No. 459 sole bargaining rights without an election. The testimony is in conflict as to whether at a conference on August 18, Murphy conceded that Local No. 459 had a majority among the production employees, excluding the tool room and the buffers and polishers, and agreed to ac- [fol. 655] cord it sole bargaining rights without an election. Even if he did make these statements, however, he stated the next day, after a telephone conversation with Serrick, that pending an election Local No. 459 could be recognized as representative of its members only. There is no dispute that on August 19 respondent agreed to negotiate with Local No. 459 as representative of its members and that these negotiations were to begin a few days later at a date satisfactory to Davis and Clark, the organizers. This fact shows that respondent had been driven from the position it maintained in its circular of August 15. At this time there were four separate labor organizations claiming membership among the employees; there was the troublesome question of the appropriate unit; and Local No. 459 had not submitted any proof of its membership beyond claiming a majority. Although respondent by its own conduct has placed the honesty of its purpose in some doubt, it probably cannot be said that it was unjustified in demanding further proof of the majority claimed. On August 24, Watson, an agent of the Board, brought Murphy a form of agreement for a consent election, signed by Local No. 459 and by the International Association of Machinists (Board's Exhibit

[5] Particularly in view of the circular described in paragraph 7 above.

23). Murphy objected to this agreement on the ground that separate elections should be held for the Acme and John Lees divisions of the plant. Watson raised no objection to this procedure, and prepared separate forms of election agreements in Murphy's office (Board's Exhibit 22; Respondent's Exhibit 9), which Murphy then signed. These forms of agreement were later signed by Local No. 459. It was the failure not of respondent but of the International Association of Machinists to approve the plan for separate elections by divisions which was the immediate cause of the strike of August 25.

21. On the basis of the foregoing findings and on all the evidence, the undersigned is unable to find that respondent on August 10, 1937, or thereafter refused to bargain collectively with Local No. 459 in violation of Section 8, subdivision (5) of the Act. The question of representation will be separately considered by the Board in Case No. XI-R-65.

[fol. 656] D. The Remaining Alleged Violations of Section 8(3) of the Act

22. In reviewing the evidence as to the individual cases of alleged discrimination, discussed hereunder, the Trial Examiner has given weight to the findings under A above as to the efforts made by respondent to defeat Local No. 459.

Walter Scott Garrett

23. Walter Scott Garrett was first employed by the Acme Machine Products Company in 1926. From 1928 he had worked in the drill press department, after January 1936 as set-up man. He was continued in this position when respondent took over the plant. He was responsible to his foreman for the proper setting up of the machines and the general working conditions in the department. Garrett had authority to requisition help from the employment office and also tools. He had no authority to hire or fire, and, unlike the foreman, he was paid on an hourly basis.

24. Garrett was a leading spirit in the movement to form Local No. 459. He obtained some application cards from a friend who was president of a similar local at the "Warner Gear" in Muncie, and began signing up the employees about the middle of May. On May 28 a first meeting was held in the Court House yard, and a charter for Local No. 459 was

secured on June 8. Garrett was elected temporary president of the new organization and served for one month. On June 17 respondent discharged him on the alleged ground of inefficiency.

25. The evidence shows that the drill breakage was excessive in Garrett's department and that he had been warned about it prior to his discharge. There was also evidence that subsequent to his discharge the drill breakage had been substantially reduced. The testimony is inconclusive, however, as to the extent of Garrett's responsibility for such breakage, and as to the extent to which improved conditions in the department may have resulted from factors other than the set-up man. Garrett's discharge came at a time when respondent was actively seeking to prevent Local No. 459 from gaining strength in its plant, and the conclusion is inescapable that this purpose influenced its treatment of [fol. 657] Garrett. Thus, despite his long experience and acknowledged competence as an operator, respondent at the time of his discharge refused his request for employment as a drill press operator at a reduced wage rate. It is clear that respondent's tender of such a position would not have removed all doubt of discriminatory treatment; on the other hand, failure to grant such a request betrays respondent's determination to get Garrett out of the plant as speedily as possible. Garrett because of his long service and position doubtless exercised considerable influence with the employees, so that from respondent's standpoint at this time the existence of a powerful motive is obvious.

26. At the time of his discharge Garrett was earning $24 a week. He has obtained no other regular employment.

27. On all the evidence the Trial Examiner finds that respondent on June 17, 1937, discharged Walter Scott Garrett because of his activity in and on behalf of Local No. 459.

Cletus Garrett

28. Cletus Garrett, the son of Walter Scott Garrett, was employed by the Acme Machine Products Company in 1933 and continued at the plant after respondent took it over. Cletus joined Local No. 459 about June 10, 1937. On Saturday, June 19, just before beginning his work, he posted notices of a meeting of employees, apparently on the plant bulletin boards. Stillwagon, the plant superintendent, rep-

rimanded him for doing this and told him that it was ground for a lay-off. Stillwagon also asked him what good the C. I. O. would do and said they had caused a bunch of strikes. Lewis also came up to his machine that day and told him he could be fired for posting bills. On June 22, Cletus' employment was terminated. Respondent contends that he was laid off, because work was slackening and he was the least efficient trimming machine operator.

29. Cletus Garrett had worked on various jobs in the plant, including the drill presses, when on about April 1, 1937, he was shifted to the trimming machines, which trim the heads on bolts. This was in the nature of a promotion, since the new job paid more money. On or about June 22 it was decided to reduce the force of three trimming machine operators on the third shift to one. Hendee, one of the [fol. 658] third shift men, was at this time moved to the second shift to replace Cletus Garrett. Respondent's Exhibit 15 shows the average hourly earnings of the employees in the trimming department for the 12 weeks' period ending June 19. It establishes that on a piece basis the hourly earnings of Hendee and Garrett were substantially equal until the final two weeks' period when Hendee averaged .964¢ an hour and Garrett .711¢. For the entire period Hendee's average hourly earnings amounted to .677¢ and Garrett's to .637¢. Respondent also relies on the fact that at this time work in the plant was slackening. While the foregoing facts would in themselves tend to justify the respondent's conduct, the fact remains that even with the return of the employment figures to their former peak, after the strike, Cletus Garrett was at no time offered reemployment either as a trimmer or in any other of the positions which he was capable of filling. In the judgment of the Trial Examiner, respondent utilized the occasion of slackening employment not to lay off but to discharge Cletus Garrett because of his activity in and on behalf of Local No. 459.

30. Cletus Garret- averaged about $25 a week at the time of his discharge. He has not secured other regular employment.

Maurice Slaughter

31. Maurice Slaughter was first hired by respondent on April 30, 1937, as a temporary laborer on the receiving dock. When this work was finished he was continued as an

employee, first on the bluing tank and later on a punch press. Slaughter took an active part in the affairs of Local No. 459 and on June 20 was elected temporary vice-president in charge of organizing the Lees division of the plant. He is a college graduate and doubtless stood out as a leader among the employees. Respondent therefore had a strong motive to terminate his employment. On the night of June 22, Slaughter ran a considerable amount of scrap material on his machine. Although this appears to have been Slaughter's first offense, respondent's witnesses claimed at the hearing that this was the reason for his "lay-off" the following day. On June 23, however, Gregory, the foreman, did not mention the scrap to him but told him that he "would have to lay him off as that job was only temporary." Re-[fol. 659] spondent also introduced some evidence designed to show that a contributing reason for Slaughter's lay-off was that a night or so before June 23 he had gone to the Acme toilet instead of the Lees toilet, which was nearer to his work. On all the evidence the Trial Examiner finds that on June 23, 1937, Maurice Slaughter was no- laid off but was discharged and that the motivating reason for such discharge was his activity in and on behalf of Local No. 459.

32. At the time of his discharge Slaughter averaged about $20 a week. On September 3, 1937, he secured other regular and substantially equivalent employment and does not desire to be reinstated.

Edward Johnson

33. Edward Johnson, a trucker who moved moldings from the packing department into the shipping department, was one of the early members of Local No. 459. He was active in attempting to interest the girls of the packing department in union affairs. On or about Tuesday, June 15, the union card which he normally carried in his jacket pocket disappeared. He did not wear his jacket while working but usually left it on a desk nearby. There was disputed testimony as to whether one employee had told another that this card had been turned over to the management, and no finding can be made on this point. On Friday, June 18, Johnson was "laid off" on the ground that work was slackening and the force had to be reduced. Johnson testified that since June 18 he had applied at the

plant about a dozen times seeking employment. He never obtained reemployment, even after peak employment was again reached following the strike. This fact, combined with the persistent efforts which respondent was making during the month of June to suppress the activities of Local No. 459, leads the Trial Examiner to the conclusion that Edward Johnson was not merely laid off but was discharged on June 18, 1937, and that the reason for the discharge was his activity in and on behalf of Local No. 459.

34. At the time of his discharge Edward Johnson was earning $20 a week. He has not secured other regular employment.

[fol. 660] Wilbur G. Mitchell

35. Wilbur G. Mitchell was employed by the John Lees Company, in Indianapolis, in May 1934 as a timekeeper. Upon the moving of the business of the company to Muncie, he became stock keeper of the stenotype department, in February 1937. He continued in this capacity until his discharge, on September 23, 1937. In June, when the attempt was being made to convert the Association into a labor organization, he passed out application cards during working hours; he also attended some of the meetings. During the latter part of July he joined Local No. 459. When the plant reopened after the strike there was a delay in reopening the stenotype department. Mitchell was active in bringing this delay to the attention of the attorney for Local No. 459 and of Judge Guthrie who stated that under the terms of the agreement terminating the strike the stenotype department should be promptly reopened. This department then reopened on September 16. Mitchell had worn his union button from the time he joined Local No. 459. After the reopening of the plant he served as a shop steward. On Saturday morning, September 18, he warned Lynch, who had some supervisory duties in the department, against permitting any solicitation for the A. F. of L. during working hours. About a half hour later, Portteus, the foreman, called Mitchell into Westlund's office. Westlund said that respondent had decided to classify Mitchell as a "confidential clerk" and he could no longer belong to Local No. 459. Five days later, on September 23, a new man appeared to take over Mitchell's duties, and Mitchell was discharged.

36. It was to Portteus that the idea first occurred that Mitchell could not properly belong to a union, following the reopening of the stenotype department after the strike. He did not call this matter to the attention of Westlund, however, until September 18. Westlund, according to his own testimony, agreed with Portteus on the basis of the proposed contract submitted by Local No. 459 on August 10, which excluded "confidential clerks" from the proposed bargaining unit (Respondent's Exhibit 1). This proposed contract, of course, had never been agreed upon by the parties, and in any event did not purport to define the expression "confidential clerks". Much evidence was in- [fol. 661] troduced as to the nature of Mitchell's duties. He was in charge of the materials used in the manufacture of stenotype machines, and was in a position to know their cost. By calculating the amounts of new materials ordered from time to time, he was also in a position to make a rough estimate as to the number of machines under contract to be built. It is clear, however, that he was in no position to determine the actual cost of each machine to respondent or respondent's profit on them. Portteus was apparently incensed by a report that Mitchell, before the stenotype department had reopened after the strike, had boasted of his knowledge that respondent had a contract to build 5,000 stenotype machines. But this report tends to disprove respondent's own contention as to the confidential nature of Mitchell's position, for respondent claims that no such contract existed. Although Mitchell's successor is paid on a weekly or monthly basis, Mitchell was always paid on an hourly basis. Mitchell on September 23 was offered a job on the assembly line at the same wage, but this was work with which he was unfamiliar and unless he could have made the required production within 30 days he would have been discharged from that job.

37. The Trial Examiner finds it significant that Mitchell's affiliations with neither the Association nor Local No. 459 were regarded as inconsistent with his position until after his activity in causing the stenotype department to reopen following the strike. It is also of significance that despite the alleged confidential nature of Mitchell's work he was permitted to continue it for five days after September 18, until a new man was secured.

38. Mitchell earned $28.60 a week while employed by respondent and has obtained no new work since his discharge.

39. On all the evidence, the undersigned finds that respondent on September 23, 1937 discharged Wilbur G. Mitchell because of his activity in and on behalf of Local No. 459.

Conclusions and Recommendations

Upon the basis of the foregoing findings of fact and on all the evidence, the undersigned hereby determines and concludes:

[fol. 662] 1. Respondent, by attempting to convert the Acme Welfare Association into a labor organization, by speeches and statements made to its employees hostile to the International Union, United Automobile Workers of America, Local No. 459, by discharging Walter Scott Garrett, Cletus Garrett, Maurice Slaughter, Edward Johnson and Wilbur G. Mitchell because of their activity in and on behalf of said Local No. 459, and by the other conduct set forth in the above findings of fact, has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivision (6) and (7) of the Act.

Respondent, by discharging Walter Scott Garrett, Cletus Garrett, Maurice Slaughter, Edward Johnson and Wilbur G. Mitchell for the motivating reason that they joined, aided and assisted the International Union, United Automobile Workers of America, Local No. 459, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the Act.

Wherefore, the undersigned recommends that respondent, The Serrick Corporation, its officers and agents, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Cease and desist from discouraging membership in the International Union, United Automobile Workers of America, Local No. 459, or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment.

3. In order to effectuate the policies of the Act, take the following affirmative action:

[fol. 663] (a) Offer to Walter Scott Garrett, Cletus Garrett, Edward Johnson and Wilbur G. Mitchell immediate and full reinstatement to their former positions will all the rights and privileges enjoyed by them at the date of their respective discharges, and with wages at not less than the rates paid to them at such times;

(b) Pay to each of the said Walter Scott Garrett, Cletus Garrett, Edward Johnson and Wilbur G. Mitchell a sum of money equal to that which each would have earned as wages, had he not been discriminatorily discharged, from the date of his discharge to the date of the offer of reinstatement, less the total amount which each shall have earned from the date of his discharge to the date of such offer;

(c) Pay to Maurice Slaughter a sum of money equal to that which he would have earned as wages, had he not been discriminatorily discharged, from June 23, 1937, to September 3, 1937, less the total amount which he earned during this period;

(d) Post immediately notices in conspicuous places in its plant at Muncie, Indiana, stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

(e) File with the Regional Director for the Eleventh Region within ten days from service of this Intermediate Report, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

It is recommended that, unless within ten days from service of this Intermediate Report the respondent notifies the Regional Director for the Eleventh Region in writing that it has complied with the foregoing recommendations, the matter be referred forthwith to the National Labor Re-

lations Board, and that said Board issue an order requiring respondent to take the action aforesaid.

It is further recommended that the complaint be dismissed insofar as it alleges a violation of Section 8, subdivision (2) and (5) of the Act and insofar as it relates to a violation of Section 8, subdivision (3) of the Act respecting all of the employees named in the complaint except Walter Scott [fol. 664] Garrett, Cletus Garrett, Maurice Slaughter, Edward Johnson and Wilbur G. Mitchell.

(S.) Alvin J. Rockwell, Trial Examiner.

Dated: February 28, 1938.

BEFORE THE NATIONAL LABOR RELATIONS BOARD
ELEVENTH REGION

Cause No. XI-C-170

In the Matter of THE SERRICK CORPORATION and INTERNATIONAL UNION, United Automobile Workers of America, Local No. 459

BRIEF AND/OR EXCEPTIONS

Comes now International Union, United Automobile Workers of America, Local No. 459, complaining union herein, and objects, excepts and rejects certain findings, holdings, decisions, recommendations and orders contained, set forth and stated in the intermediate report herein entered, towit:

1. All of sub-section B of said intermediate report entitled "B. The Closed Shop Contract, Dated August 6, 1937" and consisting of sections 8, 9, 10, 11, 12, 13, 14, 15 and 16 of said intermediate report and appearing upon pages 9, 10, 11, 12 and 13 of said intermediate report.

II. Certain parts of Sub-section C entitled "C. The Alleged Violation of Section 8(5) of the Act", namely sections 19, 20 and 21 appearing upon pages 14, 15 and 16 of said intermediate report.

III. Certain parts of Sub-section D entitled "D. The Remaining Alleged Violations of Section 8(3) of the Act",

subtitled "The Remaining Employees", namely section 40 appearing upon pages 23 and 24 of said intermediate report.

IV. Certain parts of sub-section entitled "Conclusions and Recommendations", towit:

a. Said intermediate report should conclude and recommend that the alleged closed shop agreement between respondent and Lodge No. 35 of the International Association of Machinists, Tool and Die Makers, constitutes an invalid [fol. 665] defense to the allegations of the complaint as amended and that persons discharged by respondent, as listed in paragraph five (5) thereof, in violation of Section 8(3) of the Act, were discriminated against and were entitled to back pay and reinstatement.

b. Said intermediate report should conclude and recommend that respondent on August 10, 1937 and thereafter refused to bargain collectively with Local No. 459 in violation of Section 8, subdivision (5) of the Act and should order said respondent to bargain with said Local No. 459, complaining union herein.

c. Said intermediate report should conclude and recommend that the remaining twelve (12) employees listed in paragraph 3 of the complaint, as amended, namely Wilbur Garrett, Catherine L. Long, Carl Carmen, Martha Keener, Edward Youngman, Curtis Landers, Isabelle Barrett, Agnes Holland, Cleda Watts Crutcher, Katherine Webb, Mona Armstrong and Richard Cameron had been discriminated against by respondent within the meaning of Section 8(3) of the Act and should be entitled to back pay and reinstatement.

STATE OF INDIANA,
Delaware County, ss:

Ray Desmond being duly sworn upon his oath says:

That he has this day served a copy of the foregoing brief and/or exceptions upon respondent, The Serrick Corporation, upon Lodge No. 35 International Association Machinists, Tool and Die Makers, International Association of Machinists, Production Lodge No. 1200 by placing said

copies in the United States mail, registered and addressed to each of said parties.

G. Ray Desmond.

Subscribed and sworn to before me this 15th day of March, 1938. Helen Hevland, Notary Public. My commission expires June 28, 1940. (Seal.)

[fol. 666] Copy

May 6, 1938.

Messrs. H. T. Hamilton & C. F. McDonald, Machinists Building, Washington, D. C.

GENTLEMEN:

Re: Serrick Corporation

Case No. C-460

This is to advise you that regardless of previous notification or rulings by the Board or the Trial Examiner in the above-entitled matter, you are hereby granted the right, within ten days from the receipt of this letter, to apply for oral argument or permission to file briefs.

Yours very truly, Nathan Witt, Secretary.

LJ.
Z-236

Copy

May 6, 1938.

International President, Grand Lodge, International Ass'n. of Machinists, Machinists Building, Washington, D. C.

DEAR SIR:

Re: Serrick Corporation

Case No. 460

This is to advise you that regardless of previous notification or rulings by the Board or the Trial Examiner in the above-entitled matter, you are hereby granted the right, within ten days from the receipt of this letter, to apply for oral argument or permission to file briefs.

Yours very truly, Nathan Witt, Secretary.

LJ.
Z-236.

[fol. 667] BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of THE SERRICK CORPORATION and INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL NO. 459

Cases Nos. C-460 and R-604—Decided July 27, 1938

Bolt, Screw, Automobile Moldings, Refrigerator Parts, and Office Machine Manufacturing Industry—Interference, Restraint, and Coercion: expressed opposition to labor organization; distribution of anti-union circulars among employees; surveillance of union meetings; threats to close plant and discharge employees; persuading employees to refrain from joining union; company-favored union: soliciting membership in, by supervisory employees; persuading employees to join—Company-Dominated Union: domination and interference with administration; support; discrimination in favor of, by endorsement; soliciting membership in; participation of supervisory employees; directing and permitting organizational activities during working hours; special form of remedial order: employer ordered to cease and desist from recognizing or dealing with as a labor organization—Contract: closed-shop, with company-favored organization not free choice of the majority of employees, invalid; employer ordered to cease giving effect to—Discrimination: discharges: for nonmembership in favored labor organization; for union membership and activity; charges of, not sustained as to 28 employees, dismissed as to 5 employees in view of substantial compliance with Trial Examiner's Intermediate Report recommending their reinstatement with back pay—Strike—Conciliation: efforts at, by Indiana State Labor Board—Unit Appropriate for Collective Bargaining: production employees, including toolroom employees, and excluding buffers and polishers and supervisory and office employees of a clerical nature; community of interest; company assistance in establishment of craft union; organization of production and craft employees in separate locals, by company-favored union, held to constitute organization on plant-wide basis; existence of substantial membership of craft employees in industrial union—Representatives: proof of choice; application for membership in union, as—Collective Bargaining: refusal to recognize representatives as exclusive repre-

sentative; employer's duty to cooperate with union to determine fact of majority representation; meeting with union representative and making of counter proposals with view of contract for members only, not compliance with duty under Act; State Court order based on truce agreement providing for bargaining negotiations for members only and suspending strike until election may be ordered under pending Board petition, not waiver of employer's prior and subsequent unjustifiable refusal to bargain—Reinstatement Ordered: discharged employees, dismissing employees hired since their discharge, if necessary—Back Pay: awarded: discharged employees; not to include period between date of Intermediate Report and date of decision in case of employees as to whom Trial Examiner recommended dismissal of complaint—Investigation of Representatives: petition for, dismissed, in view of order to employer to bargain.

Mr. George Rose and Mr. Colonel C. Sawyer, for the Board.

White & Haymond, by Mr. Walter D. White and Mr. William T. Haymond, of Muncie, Ind., for the respondent. [fol. 668] Mr. Paul S. Brady, of Muncie, Ind., for the U. A. W.

Mr. H. T. Hamilton and Mr. C. F. McDonald, of Washington, D. C., for the I. A. M.

Mr. Eugene R. Thorrens, of counsel to the Board.

Decision and Order

Statement of the Case

Upon charges and amended charges duly filed by International Union, United Automobile Workers of America, Local No. 459, herein called the U. A. W.,[1] the National Labor Relations Board, herein called the Board, by Robert H. Cowdrill, Regional Director for the Eleventh Region

---

[1] In the original complaint and in the notice of hearing upon the petition referred to below, the name of the U. A. W. appeared as "United Auto Workers of America, Local No. 459." At the hearing the Trial Examiner granted the Board's motion to correct the erroneous designation of the U. A. W.'s name wherever it appeared in the pleadings and papers filed in the proceedings.

(Indianapolis, Indiana), issued its complaint dated October 5, 1937, against The Serrick Corporation, Muncie, Indiana, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), (3), and (5) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon the respondent, the U. A. W., and upon the Acme-Lecs Welfare Association, Inc., the successor to Acme Welfare Association, herein called the Association, a labor organization alleged in the complaint to have been dominated by the respondent.

The complaint as amended alleged in substance (1) that the respondent discriminated in regard to the hire and tenure of employment of the 17 production employees listed in Appendix A below and 17 other named production employees to discourage membership in the U. A. W.; (2) that the respondent discriminated in regard to the hire and tenure of employment of 18 toolroom employees listed in Appendix B below and 2 other named toolroom employees by discharging them on August 13, 1937, and refusing to reinstate them because of their failure or refusal to become members of International Association of Machinists, herein called the I. A. M.; (3) that the respondent has since July 5, 1935, interfered with, dominated, and contributed financial and other support to the Association; (4) that the respondent refused to bargain collectively with U. A. W. as the exclusive representative of the employees in an appropriate bargaining unit composed of all production employees at the Muncie plant, exclusive of [fol. 669] and metal polishers, foremen, supervisory officials and office employees of a clerical nature; and (5) that the respondent, at various times since April 1, 1937, by threats, the making of speeches, the circulation of handbills, conversations with individual employees, and in other ways, attempted to discourage and discouraged its employees from membership in the U. A. W. and interfered with their free choice of representatives for the purposes of collective bargaining and other mutual aid and protection.

The respondent filed an answer, which was amended at the hearing, denying the alleged unfair labor practices and stating certain affirmative matter, including the de-

fense that on or about August 6, 1937, it entered into a closed-shop agreement with the I. A. M., covering the employees in its toolroom at the Muncie plant, and that it terminated the employment of the 20 toolroom employees named in the complaint, except Isaac Newton Garrett, in accordance with the provisions of the closed-shop agreement and that Isaac Newton Garrett quit his employment.

On August 16, 1937, the U. A. W. filed a petition with the Regional Director alleging that a question affecting commerce had arisen concerning the representation of the production employees of the respondent at its Muncie plant and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On September 27, 1937, the U. A. W. filed an amended petition, enlarging the unit which it claimed to be appropriate to include toolroom employees. On the same day the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice; and, acting pursuant to Article III, Section 10 (c) (2), of said Rules and Regulations, further ordered that the petition be consolidated for purposes of hearing with the case arising out of the charges filed by the U. A. W. and upon which, as stated above, the Board on October 5, 1937, issued its complaint against the respondent. Notice of the hearing upon the petition was duly served upon the respondent, upon the U. A. W., upon the I. A. M., and upon the Acme-Lees Welfare Association, Inc.

On October 12, 1937, the I. A. M. filed with the Regional Director a motion to intervene in the proceedings, stating facts as to its designation as bargaining agent by a substantial number of production employees at the respondent's Muncie plant and questioning the U. A. W.'s claim that it represented a majority of such employees. On October 14, 1937, pursuant to Article II, Section 19, of the Rules and Regulations, Series 1—as amended, the Regional [fol. 670] Director issued and served upon the parties his order permitting such intervention for the purpose of presenting evidence with respect to the designation of the I. A. M. as the representative of the respondent's employees, and with respect to the question of the appropriate bargaining unit.

Pursuant to notice, a joint hearing on the complaint and petition was held in Muncie, Indiana, from October 18 through November 15, 1937, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board. The Board, the respondent and the U. A. W. were represented by counsel, the I. A. M. by its Grand Lodge representatives, and all participated in the hearing. Counsel purporting to represent the Acme-Lees Welfare Association, Inc., attended at the hearing, but inasmuch as that organization did not seek to intervene, the Trial Examiner ordered the reporter not to note his appearance. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the hearing counsel for the Board moved to strike from the respondent's answer certain allegations which charged that the international organization of the U. A. W. was engaged in a nation-wide illegal conspiracy to seize plants in various parts of the country, including the Muncie plant of the respondent, under the guise of collective bargaining activity. The Trial Examiner ordered these irrelevant allegations striken from the answer and, accordingly, denied an application by the respondent for the issuance of subpoenas to compel the attendance of Homer Martin, and other officers of the international organization of the U. A. W., and the production of the books and records of that organization, and the attendance of the Chief of Police and Chief of Detectives of the city of Detroit, Michigan, and the Sheriff of Genesee County, Michigan, in order to sustain those allegations. The rulings of the Trial Examiner are hereby affirmed. At the hearing counsel for the Board moved to dismiss without prejudice, the complaint with respect to 6 of the production employees named therein and joined in a motion by the respondent to dismiss the complaint with respect to 11 other production employees named therein. The Trial Examiner granted these motions. His rulings are hereby affirmed. The persons listed in Appendix A below are the 17 production employees named in the complaint as to whom the complaint was not dismissed. The Trial Examiner also granted a motion by the respondent to dismiss the complaint for want of evidence with respect to 2 toolroom employees named therein. His ruling is hereby affirmed. The 18

persons listed in Appendix B below are the toolroom employees named in the complaint as to whom the complaint was not dismissed. During the course of the hearing the Trial Examiner made several rulings on other motions and on objections to the admission of evidence. The Board [fol. 671] has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On March 4, 1937, the Trial Examiner served upon the parties his Intermediate Report, finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act, and had not engaged and was not engaging in unfair labor practices within the meaning of Section 8 (2) and (5) of the Act. More specifically, he found that the respondent discriminatorily discharged 5 of the 17 production employees, and recommended that the respondent reinstate 4 of them and give back pay to all 5,[2] and that the allegations of the complaint be dismissed as to the other 12 production workers. He also found that the respondent did not discriminatorily discharge the 18 toolroom employees and recommended the dismissal of the complaint as to them. He further recommended the dismissal of the complaint in so far as it alleged violations of Section 8 (2) and (5) of the Act.

Thereafter, the U. A. W. filed exceptions to portions of the Intermediate Report. The respondent filed no exceptions.

Subsequently the Board notified all the parties that they had a right to apply for oral argument before the Board or for permission to file briefs. None of the parties exercised this right.

The Board has considered the U. A. W.'s exceptions to the Intermediate Report, and for the reasons hereinafter stated, sustains the exceptions in most respects.

---

[2] Maurice Slaughter, the employee included in the group of five production workers as to whom the Trial Examiner did not recommend reinstatement, testified that he had secured other employment and did not desire to resume his place with the respondent.

Upon the entire record in the proceedings the Board makes the following:

Findings of Fact

I. The Business of the Respondent

The respondent is an Ohio corporation, operating plants at Defiance, Ohio, and Muncie, Indiana. Only the Muncie plant is involved in the present proceedings. In November 1936, the respondent purchased the business and certain of the assets of the Acme Machine Products Company, Muncie, Indiana. In January 1937, the respondent acquired all the assets and the business of The John Lees Company, Indianapolis, Indiana, and installed the machinery and equipment of The John Lees Company in the plant of the Acme Machine Products Company, and thereafter operated its business under a single roof at its Muncie plant as the Acme-Lees Division.

[fol. 672] The respondent is engaged in the manufacture of bolts and screws in the Acme Division and automobile moldings, refrigerator parts, and stenotype machines in the Lees Division.

The principal raw material used by the respondent is steel. The value of the steel used by it during the first 10 months of 1937 was between $600,000 and $800,000. During the first 6 months of 1937 the respondent imported from sources outside the State of Indiana 10,000 tons of steel, valued at approximately $400,000, for use as raw material in its manufacturing. During the first half of 1937 the respondent manufactured 75,000,000 cap screws, valued at $200,000, and an unstated quantity of moldings, valued at $400,000. The respondent shipped approximately 70 per cent of these products direct to customers outside the State of Indiana.

The respondent employs over 800 persons at its Muncie plant, including the supervisory and clerical employees. Its gross semi-annual pay roll for the first half of 1937 was approximately $500,000.

II. The Organizations Involved

International Union, United Automobile Workers of America, is a labor organization affiliated with the Committee for Industrial Organization. Local No. 459 received

its charter from the international organization on June 8, 1937. It admits to membership all employees at the respondent's Muncie plant, except buffers and polishers, and supervisory, clerical, and office employees.

International Association of Machinists is a labor organization affiliated with the American Federation of Labor. It chartered Tool and Die Makers Local No. 35, which admits to membership the employees in the toolroom at the respondent's Muncie plant. The I. A. M. also granted a charter to Production Lodge No. 1200 on October 15, 1937, the charter to bear date, September 14, 1937. Lodge No. 1200 admits to membership all production employees at the respondent's Muncie plant, except buffers and polishers, tool and die makers, and supervisory and clerical employees.

Acme Welfare Association, a dissolved body, was a labor organization, unaffiliated with any other labor organization. It admitted to membership all employees at the respondent's Muncie plant, except supervisory employees having authority to hire and discharge. In September 1937, the Association transferred its assets to Acme-Lees Welfare Association, Inc., incorporated under the laws of the State of Indiana on September 16, 1937, as an organization without power to act as a labor organization.

[fol. 673] III. The Unfair Labor Practices

A. The Association

In the spring of 1934 a group of Acme Machine Products Company employees, led by John D. Lewis, a machinist in the plant, organized the Acme Welfare Association to assume control of an employees' distress fund which had previously been administered by the Company comptroller to the dissatisfaction of the employees who contributed to it. Lewis, its first president, became personnel director of Acme Machine Products Company in July 1935. He occupied a dual role as the head of the Association and as a supervisory official of the Acme Machine Products Company until December 1936, and, when the respondent purchased the business and certain assets of that Company at that time, he served in the same dual capacity for the respondent until July 1937.

At its inception in 1934 the Association adopted bylaws which provided machinery for the adjustment of grievances concerning conditions of work. In actual practice, however, the Association did not adjust grievances. It devoted its energies to social and athletic activities and to the loaning of funds to needy employees. Without previous consent of the employees, the Acme Machine Products Company and the respondent in turn, checked off for the Association 10 cents a week from the pay of all employees, except those who made specific objection. Both the Acme Company and the respondent allowed the Association to use a portion of the plant, without charge, for the operation of a cafeteria and furnished garage quarters, rent-free, to the Association which it operated on a fee rental basis as a parking space for employees' automobiles. The proceeds of these enterprises were applied to Association purposes. The Association committeemen held weekly meetings on company property, after working hours, to discuss loans and shop conditions. The Association membership met monthly outside the plant.

After the respondent acquired the business of the Acme Machine Products Company it gave its approval to the Association. At an Association meeting in February or March 1937, Charles R. Poole, the respondent's general manager, and Lewis advised the employees that "outside" labor organizations were unnecessary in the plant, praised the work of the Association, and informed them that the Association could handle their grievances. At about the same time the Association began a reorganization campaign for the purpose of enrolling as members the employees of the Lees Division who had come to the respondent's plant at Muncie from Indianapolis in February when the respondent purchased all the assets and business of The John Lees Company. When the U. A. W. began organizing in the [fol. 674] plant in May, the Association intensified its membership drive to resist the entry of the U. A. W. into the plant.

About June 1, Lewis addressed an Association meeting of two to three hundred women employees at the large log cabin in Heekin Park to warn them against a C. I. O. "invasion." Supervisory employees, including Warren Leet, foreman of the packing department, and Frank Truax, night foreman of the Acme division, solicited membership in the Association during working hours in the plant. Fore-

man Dewey Patton distributed copies of the Association bylaws to the employees while at their jobs. Walter Fouts, a supervisory employee in the toolroom, urged his fellow workers to join the Association in order to defeat the C. I. O. Lewis assigned Harold Sharpe, Association committeeman for the toolroom, the task of persuading the employees in that department to join the Association. Ordinary employees participated in the Association membership drive during working hours and on company property. Nina Sample, Association committeewoman, passed through the plant during working hours, telling the employees to join the Association because it was personnel director Lewis' organization to combat the C. I. O. Lester Nichols, an Association committeeman, warned Cletus Garrett, an employee, that if he did not join the Association, he would be soon hunting another job. Garrett, a member of the U. A. W. and the son of the U. A. W.'s temporary president, refused. Nichols' prediction materialized the following week with Garrett's discharge.

Nevertheless, the attempt to transform the Association into an effective organization to compete with the U. A. W. proved abortive. Walter Fouts deplored Harold Sharpe's lack of enthusiasm for the Association. He complained to Lewis that he "didn't see how the hell we could sell the Welfare Association to the employees in the toolroom when the committeeman himself didn't believe in it." Sharpe admitted to Lewis that Fouts was justified in his criticism and resigned as Association committeeman about July 8-15. He told Lewis: "It looks too much like a company union." About the same time Lewis resigned as president of the Association pursuant to instructions from A. F. Westlund, the respondent's works manager and Poole's successor, who thought that Lewis' position as personnel director identified him with the management and hence was inconsistent with his position as president of the Association.

In the latter part of July or early part of August, the respondent refused to sign an agreement, providing merely for recognition and covering the subject of vacations, which the Association suggested. Lewis testified that the respondent rebuffed the Association because the Association committee presented the proposed contract with the offensive argument that its acceptance would head off "other contracts."

[fol. 675] Some of the leaders in the Association filed Articles of Incorporation for the Acme-Lees Welfare Association, Inc., a nonprofit corporation organized to lend financial and other aid to its members, with the Secretary of the State of Indiana on September 8, which were approved on September 16, 1937. The Association transferred its assets to the new corporation and dissolved. By express provision contained in its Articles of Incorporation the corporation has no power to act as a labor organization.[3] Since its organization the corporation has operated the cafeteria in the plant, paying rent for the quarters it occupies and hiring its own help. The respondent has discontinued the check-off. The record indicates that the corporation has severed the ties which previously existed between the Association and the respondent, and, at the time of the hearing, had no improper connection with the respondent.

It is clear, however, that the Association during its 3 years' existence acted as a labor organization by holding itself out to the employees as an agency for the adjustment of grievances concerning terms and conditions of employment, by requesting recognition by the respondent as a collective bargaining representative, and by seeking improved working conditions for its members.

We find that the respondent, since December 1936 and until September 16, 1937, dominated and interfered with the administration of the Acme Welfare Association and contributed support to it. We further find that, by such acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the pur-

---

[3] The Articles of Incorporation provide: "This Corporation shall not have the right to bargain with any employer relative to wages, hours, or working conditions for its members and shall not in any way be or become any kind of union. It is understood that this Corporation is not a union, and has no rights as a union to bargain for itself or any of its members with any person, firm, or corporation. And this Corporation shall not exercise or attempt to exercise any rights given to any labor unions of any kind or nature whatsoever."

poses of collective bargaining or other mutual aid or protection.

B. The alleged discriminatory discharges

1. The toolroom employees

The complaint as amended alleges that on August 13, 1937, the respondent discriminatorily discharged 18 persons listed in Appendix B, employees in the toolroom at the respondent's Muncie plant, because of their refusal or failure to become members of the International Association of Machinists. The respondent admits the allegation and [fol. 676] relies upon a closed-shop contract[4] with the I. A. M.,[5] dated August 6, 1937, as justification for the discharges, except in the case of Isaac Newton Garrett, who, the respondent asserts, quit his employment.

(a) Background of labor organization among the respondent's employees

Prior to April 1937, the employees at the respondent's Muncie plant, except the buffers and polishers, were not

[4] Section 8 (3) of the Act provides: ". . . that nothing in this Act . . . shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a) in the appropriate collective bargaining unit covered by such agreement when made."

[5] The pertinent sections of the I. A. M. contract read . . . "Whereas, the employer agrees to recognize Tool and Die Makers Lodge No. 35 . . . as the sole bargaining agency for all the employees in their toolroom at the Muncie plant . . . (Article 5). It is agreed that all employees covered by this agreement shall be members in good standing in their organization. If additional help is required the employer may consult with the secretary of said organization or the shop committee who will offer their services in supplying this help, but in the event that they are unable to do so, then the employer shall have the right to hire such additional help as he may require, but after a trial period of thirty (30) days, it will be necessary for said new employees to become members of the organization."

organized in any affiliated union. However, in March 1937, Metal Polishers, Buffers, Platers and Helpers International Union, Local 453, affiliated with the American Federation of Labor, obtained a 1-year contract, dated March 29, covering approximately 75 employees in the buffing and polishing department. This contract is not involved in these proceedings; its validity is admitted by all parties; and neither the U. A. W. nor the I. A. M. admit buffers and polishers to membership.

As found above, prior to the spring of 1937, Lewis, the respondent's personnel director, and Poole, the respondent's works manager, sought to strengthen the Association as a labor organization dominated by the respondent. At an Association meeting Poole urged the employees to utilize that organization, rather than an independent national body, as a medium for the adjustment of their labor relations. Lewis echoed this sentiment. He asserted his dislike for "unions and unionism" and threatened to quit his position if he became involved in a labor dispute with a union.

Shortly thereafter the U. A. W. began its organizational campaign among the employees at the respondent's Muncie plant. At a meeting of Association committeemen, called about June 1, to discuss the Association's reorganization program, Lewis declared: "Boys, we don't want the C. I. O. in this plant, and the fact of the matter is I have got a couple of spotters up to the C. I. O. hall every meeting they have." Membership in the U. A. W. grew during May and June. Walter Scott Garrett, a set-up man in the drill press department, alone signed up 22 employees as members on May 28.

[fol. 677] Garrett acted as temporary president of the U. A. W. for 1 month. On June 17, he was discharged after a service of more than 10 years with the Acme Machine Products Company and the respondent. The respondent also discharged Maurice Slaughter, temporary vice president of the U. A. W., in charge of organizing the employees in the Lees Division of the plant, on June 23, 3 days after his attendance at a union meeting where he was entrusted with these important duties. On Saturday, June 19, before the commencement of work that morning, Cletus Garrett, son of Walter Scott Garrett, posted a notice[6] of an em-

[6] The poster read: "Notice Important Meeting of John Lees and Acme employees at Lido Ballroom Corner Walnut and Howard Sunday 10 A. M. June 20."

ployees' meeting on the respondent's bulletin board. Superintendent Jess Stillwagon promptly called him to task: "Do you know you can be laid off for that? What good (is) the C. I. O. * * * going to do anybody * * * they caused a bunch of strikes and trouble * * *." Stillwagon threatened to call Works Manager Westlund's attention to the matter. Lewis also reproached Garrett: "You can be fired for those bills." Lewis asked Garrett whether he belonged to the C. I. O. On Monday, the next work day, Garrett was discharged for alleged inefficiency. Thus in the course of a week the respondent eliminated from its employ three U. A. W. leaders.

Aware of the activity of the U. A. W., the respondent took steps to defeat organization by the U. A. W. About June 1, the Association invited two to three hundred women employees to a "beer party" at the Heekin Park Cabins to hear an address by Lewis, the respondent's personnel director. He strongly warned them against the C. I. O.: "It is just merely a union coming into our plant to take over the management * * * we don't want nothing like that in here * * * if it gets into this plant, all your privileges will be taken away from you * * * you won't be allowed to leave your machines and go to the cafeteria and get anything to eat or drink during working hours, and there will be no candy boy coming down through the shop during working hours as there is at present, and you will be questioned * * * when you leave your department and go to another department * * * if this union comes in, all this would be taken from you and it would be just merely a place to work * * * if your job goes down, you will not go to the rest room and wait until it is started up again, but you will just merely be sent home and would not work any more that day * * *. Where is there a plant in the State of Indiana that you have the privileges you have in this plant? Let us go on and make this plant, this Acme-Lees plant, just like the old Acme plant was, and co-operate,—not let this union come in." Thereupon Lewis called for two rising votes: "How many girls here * * * favor keeping the Welfare Association?" Almost all present registered an affirmative [fol. 678] vote. "How many want to see the C. I. O. come in and take over the plant?" Only a few arose from their seats.

The Association conducted a poll to ascertain the relative strength of the C. I. O. and the Association. About July

1-15, Lewis handed Harold Sharpe, Association committeeman for the toolroom, application cards for Association membership and directed him to solicit the toolroom employees. Sharpe secured the permission of Oscar McCoy, the toolroom foreman, to proceed. McCoy not only granted his permission but also instructed Sharpe to take the application of Joe Bolander, the third shift toolroom foreman, adding: "Well, we have got to do something; if the C. I. O. gets in here the place will go to hell." Neither McCoy nor Bolander denied this testimony.

In June and July the Association circulated in the plant, during working hours, a paper among the employees for signature. Lewis assured Katherine Webb and another employee of the propriety of signing the paper. He admitted "it was to keep other unions out." Inasmuch as the U. A. W. was the only labor organization engaged in a campaign for members in the plant at the time, Lewis' reference applied unmistakably to it.

Despite the respondent's efforts to build the Association into an effective instrument to bar the U. A. W. from its plant, the Association failed to secure the adherence of the bulk of the employees. The decline of the Association as a labor organization has been noted above in the resignation of Lewis, as its president, Sharpe's relinquishment of his office as Association committeeman for the toolroom employees, and the respondent's rejection of the Association's tendered contract. We consider now the entry of the I. A. M. into the plant.

(b) Events leading to the execution of the contract with the I. A. M.

When the respondent's utilization of the Association as a company-dominated labor organization in opposition to the U. A. W. proved unsuccessful, word that the respondent's high executive officials would not acknowledge the C. I. O. as the employees' representative and that they favored the American Federation of Labor reached the ears of the rank and file toolroom employees. Shortly prior to July 15, Sharpe told Cecil B. Shock, a supervisory employee who was in charge of the toolroom in foreman McCoy's absence and who later became the first president of the I. A. M. Tool and Die Makers Local No. 35, that he contemplated resigning as Association committeeman. Shock observed that the Association was the "lesser of two evils." He in-

formed Sharpe that Murphy, the vice president of the respondent and its general manager at its Muncie plant, would [fol. 679] not recognize the C. I. O. and that he would close the plant rather than deal with the U. A. W. "Murphy told me," said Shock, "that he hasn't had a vacation anyhow, and that he would lock up the plant, get on his yacht and take a nice fishing trip." Robert Bunch, a tool and die employee, testified that Shock made a similar statement to him about the middle or latter part of July. Both Shock and Murphy appeared as witnesses for the respondent, but neither denied the above testimony. We find that they made the statements accredited to them.

About July 26, Wayne Shimer, the night superintendent, told Erskine Allison, a toolroom employe, that "Mr. Serrick would recognize an A. F. of L. but he would not recognize a C. I. O. union." Shimer denies Allison's testimony regarding this conversation, claiming he did not know Serrick, president of the respondent, at this time, but admits discussing the subject of unions with Allison. Serrick did not testify in the proceedings. The Trial Examiner, who saw and heard the witnesses, specifically found that Shimer made the statement in question to Allison. We find that Shimer made the statement.

The movement to organize the toolroom employees in the I. A. M. took definite form in the middle of July. About July 15-20, Walter Fouts, a supervisory employee in the toolroom, with two toolshop employees, Moses Byroad [7] and Arthur Baker, broached to Shock the proposal to organize a union of toolmen to be affiliated with the American Federation of Labor. Shock promised his cooperation if a majority of the toolroom employees favored such a union. During working hours Byroad ranged through the shop, ostensibly to ascertain the union preferences of the toolmen. According to Byroad's estimate, about 80 per cent of the toolmen favored the American Federation of Labor, and 20 per cent favored the Committee for Industrial Organization or were undecided. Byroad notified the employees of the result of his oral interrogation. However, Byroad did not question the employees on all three shifts. On August 10, the day before the execution of the I. A. M. contract, the I. A. M. had only 34 members of 63 eligible toolmen.

---

[7] Also referred to in the record as Moses Birod.

Fouts, Shock, and Baker sent Byroad to communicate with C. F. McDonald, an I. A. M. organizer, about July 25-28, during working hours. Byroad claims he told McCoy that he was leaving the plant but did not disclose to him the purpose of his mission. He also testified that Fouts, Shock, and Baker reimbursed him $1.68 for lost time.

On the night of July 28, McDonald held an organization meeting at the City Hall Building in Muncie. Thirty-four toolroom employees signed applications for membership in [fol. 680] the I. A. M. on that date. At the meeting an application for a charter was executed and the applicants for membership authorized McDonald to present a proposed contract to the respondent on their behalf. McDonald tendered the proposed contract to the respondent on August 2. It was signed on August 11.

In its organizational campaign the I. A. M. was aided by a corps of supervisory toolroom employees, chiefly, Walter Fouts. He was in charge of the roll department in the toolroom, working alongside certain machinists whom he directed. Although he had no power to hire or discharge, he made recommendations to higher officials as to the suitability for their jobs of employees under his direction. In his testimony Levi Benn described Fouts as "his boss."

Fouts solicited Francis Witmer, Chester Kirby, Floyd Stevenson and Levi Benn, all toolmen and members of the U. A. W., for I. A. M. membership, at various times. All refused to join. Fouts called Witmer to his work bench, just prior to the time the I. A. M. began organizing in the tool shop, and told him that he had arranged with an American Federation of Labor organizer to establish a local in the plant for the toolmen. Subsequently on frequent occasions, Fouts requested Witmer to sign an application for "the A. F. of L. so that we could abolish any C. I. O. organization in the shop." About August 1, Fouts discussed the I. A. M. with Benn. Fouts asked Benn if he did not think "it would be" his "job" if he did not join. On approximately the same date Shock tried to persuade Benn to join the I. A. M. In May or June Fouts had failed to prevail upon Benn to become a member of the Association. In June Fouts had made similar efforts to secure Floyd Stevenson's application for Association membership, informing him that he "would like to get all of us into that in order to beat the C. I. O. * * * would like for" Stevenson "to get into the company union just in order to

beat the C. I. O." About August 1, Fouts urged the same reason in attempting to induce Stevenson to join the I. A. M.: "* * * anything to beat it (the U. A. W.), and if" Stevenson "would go in (the I. A. M.) and did not want to stay, that would be all right, just as long as they got in enough to beat them out,—we could all help."

Others in a supervisory capacity also helped the I. A. M. organization drive. Otis Wheeler, I. A. M. committeeman, invited several employees to the desk of Joe Bolander, toolroom foreman on the third shift, to sign I. A. M. applications. In Bolander's presence, Floyd Stevenson questioned Wheeler's right to solicit union memberships on company premises during working hours. This incident happened 2 or 3 weeks prior to Stevenson's discharge, which occurred on August 13. Bolander, and Russell Dininger, toolroom foreman on the second shift, were in charge of the men on their shifts. Although they had no power to hire or discharge, they assigned work to the employees and were re- [fol. 681] sponsible for its proper distribution. They also relayed foreman McCoy's orders to the employees. Charles J. Fensel, a tool repairman, in his testimony referred to Dininger as "the boss on the second trick." On August 10, Dininger offered Fensel "a good rating if" he "would join the A. F. of L." Fouts, Bolander, and Dininger belong to the I. A. M. Although a union may admit minor supervisory employees to its ranks, yet when, pursuant to the known desires of the employer, they engage in activities to establish a labor organization favored by the employer, they must be regarded as acting in behalf of the employer.

On August 6, Lewis asked Witmer and Sharpe, while they were at their machines, why they did not "join the A. F. of L." They testified that Lewis advised them "to straighten things out and have one organization in here."

In addition, ordinary employees assisted the I. A. M. under circumstances that show the respondent's approval. Byroad spent considerable company time during the week prior to August 13, the date of the mass discharge of the toolmen, soliciting memberships for the I. A. M. in the shop. Wheeler, an I. A. M. committeeman, and Baker, both ordinary employees, left their benches in the toolroom during working hours to aid in the task of securing I. A. M. adherents. Although foreman McCoy himself did not participate in actual solicitation, he knew of the union activities of the others in the toolroom in behalf of the I. A. M. In a

conference in Murphy's office on August 3, hereinafter referred to, McCoy admitted he was aware of such solicitation. While he testified that he scolded members of the rival organizations for excessive talking, the record does not disclose that he reprimanded the active employees for obtaining signatures to I. A. M. application cards in the shop. On the other hand, there is no showing that any plant activity by the U. A. W. occurred comparable in extent to that of the I. A. M. Indeed, the respondent discouraged U. A. W. activity in the plant whenever it occurred. The respondent's hostility to U. A. W. organization is illustrated by the prompt disciplinary attention Stillwagon and Lewis gave Cletus Garrett when he posted a notice of a U. A. W. meeting on the plant bulletin board. A considerable amount of the I. A. M. solicitation was done openly during working hours under circumstances which compel the conclusion that foreman McCoy knew and approved the procedure. Fouts solicited for the I. A. M. frequently in the latter part of July and through August 10 during working hours when McCoy was present in the toolroom. When Byroad solicited Stevenson's application for I. A. M. membership, McCoy stood 6 to 8 feet away. McCoy's desk was located only about 6 feet from Stevenson's bench. In the course of a discussion of his union activity, Byroad stated to Harold Sharpe, a former Association committeeman: "Mack (foreman McCoy) [fol. 682] knows what I am doing. He is an old A. F. of L. man himself. He wants us to get into the A. F. of L. but he doesn't want us to have anything to do with the C. I. O."

Witnesses for the respondent testified that at foremen's meetings the works manager and the plant superintendent discussed the Act with the foremen and instructed them to refrain from interference with union activities of the employees. Nevertheless, it was not until after the signing of the contract with the I. A. M. that the respondent posted rules in its plant banning supervisory activity in connection with labor organizations.

(c) Execution of the contract with the I. A. M.; and the discharges

Westlund, the respondent's works manager at its Muncie plant, who conducted the negotiations leading up to the closed-shop contract with the I. A. M. testified that the course of dealing was as follows: His first contact with the I. A. M. occurred on August 3, when McDonald, the I. A. M.

representative, called on him at the plant and advised him of his intention to organize the respondent's toolroom employees. McDonald informed Westlund that the toolroom employees were not dissatisfied with their wages or working conditions, but that they merely wanted "an organization of their own." They discussed the provisions of a proposed agreement, which McDonald presented, and agreed on all its terms, except two, the closed shop and the provision relating to working hours, as to which Westlund reserved decision pending a conference with Murphy. Westlund aided McDonald in making slight changes in the draft and suggested that it be rewritten. McDonald offered no evidence at that time of an I. A. M. majority. Westlund contended himself with McDonald's assurance that satisfactory proof would be furnished at a later time.

That afternoon a conference was held in Murphy's office, with Westlund, R. A. Wise, tool supervisor, McCoy, Shock, Fouts, and Rudolph Keil, a tool and die worker, present. Murphy inquired as to the need for a union contract. Shock acted as spokesman for the I. A. M. According to Keil's testimony Shock explained: "They didn't need a union in the toolroom, but they were drawing that up and trying to get it signed by the Company in order to keep the C. I. O. out of the toolroom." Murphy announced that he had no objection to negotiations for a contract with the I. A. M., if it represented a majority, but that the respondent was "not extremely anxious" to sign a closed-shop contract or a contract which limited the normal working week to 40 hours. Shock again assumed leadership. Keil testified that Shock pointed to a "controversy * * * raging in the toolroom at the time, due to the organizational activities of both [fol. 683] U. A. W. and the A. F. of L. * * * inasmuch as their group had a clear majority * * * it would clear the atmosphere and make for peace, harmony, and efficiency in the department if one organization could be in there." McCoy corroborated Shock's assertion as to the existence of union activity in the toolshop. Shock assured the respondent's officials that there would be no difficulty concerning the provision relating to hours in the contract negotiations. And, "after the trouble was settled," Shock added, according to Keil, "they could tear up the contract." Although Murphy and Shock deny this testimony, the occurrence of two independent incidents lend support to Keil's

version.[8] In the course of a conference on September 22, 1937, Barney Maynard, a U. A. W. committeeman, asked Westlund, if it was not a fact that, when the I. A. M. representatives presented its proposed contract to the respondent, they asserted that "after they had gotten the contract and got the C. I. O. out of the plant, kept them out of the plant, they could just tear the contract up they wouldn't need no union there." Westlund replied: "Well, no, not in just that many words, but the statement was made." The other incident occurred when those who participated in the August 3 conference emerged from Murphy's office. Floyd Stevenson testified: "* * * They seemed to have a meeting there between Rudy Keil and Shock and Walter Fouts and McCoy one day in the office, and when they came back Walter Fouts told me that the C. I. O. was not as strong as they thought * * * the A. F. of L. would beat them easily * * * they said if I would get in * * * *I could drop it just as soon as the trouble was over with, as they was going to do it too.*" (Italics supplied.)

Under these circumstances, we find that Shock made the statements attributed to him by Keil. It is apparent, therefore, that the I. A. M. by suggesting that it would not actually function as a collective bargaining agency after it was recognized, lent itself to the respondent's plan to prevent the organization of its employees in the U. A. W. Nor did the respondent in the early stages of negotiation with the I. A. M., when it indicated its willingness to sign a closed-shop agreement with that organization, intend to consummate the proposed arrangement. Rather the respondent hoped that the toolroom employees would be induced to join the favored union when they learned that the respondent "contemplated" an exclusive I. A. M. toolshop.

---

[8] Wise did not testify in the proceedings. McCoy, although a witness, was not interrogated on this point. On direct examination, as a witness for the respondent, Westlund denied Keil's testimony. On cross-examination, he qualified his denial to the extent of saying that it was his "recollection" that no mention was made of the C. I. O. at that meeting. Fouts testified that he "didn't hear" Shock make the statements in question. Shock claims that he merely asserted, in support of his organization's negotiations, that an I. A. M. contract "would relieve the tension" and "clear up the situation in the toolroom."

Thus, when Levi Benn called at the paymaster's office for his check on August 13, personnel director Lewis stated: [fol. 684] "Benn, I am sorry this happened. When this thing first started it was only for a bluff * * * the fellows called the bluff and we had to go on and do it."

At the August 3 conference, Murphy expressed satisfaction with the I. A. M. proposals, except for the provision as to the 40-hour week, and stated that he would submit them to President Serrick in New York. Murphy testified that Shock converted him into a closed-shop adherent during the brief session in his office.

On August 4, McDonald returned with a revised draft and discussed wage rates with Westlund. They agreed on wage increases, ranging from 5 to 15 cents an hour, for 18 employees, which would raise their income to the prevailing general minimum in the shop, and postponed for later negotiation the question of increases for 15 others. The same day Murphy departed for New York to confer with Serrick, taking with him a copy of the I. A. M.'s proposed contract, which did not specify wage rates. On August 5 or 6, McCoy handed Westlund a typewritten list of I. A. M. members who were employed in the toolroom. McCoy testified that he secured the list from an I. A. M. committeeman whose name he did not recall. Thirty-eight names, including those of Fouts, Shock, Bolander, and Dininger, appeared on the list. It is significant that, although Westlund did not forward the information as to the I. A. M.'s majority to New York, nevertheless, on August 6, Murphy wired Westlund: "Agreement Satisfactory Except Forty Hours. Make It Forty-Four." That night the I. A. M. membership approved the respondent's modification of the proposed agreement at a union meeting, and so notified the respondent the following morning. On August 11, the day after the U. A. W. presented to the respondent its written proposals, covering all production employees, including toolmen, the respondent signed the I. A. M. agreement.

On August 13, 1937, the respondent's foreman asked the employees in the toolroom who had not already joined the I. A. M. if they intended to apply for membership. Those employees who answered in the negative were discharged that day.

On August 14, the respondent and the Metal Polishers, Buffers, Platers and Helpers International Union, Local 453, affiliated with the A. F. of L., amended the buffers' and

metal polishers' contract to provide for a closed shop in the respondent's buffing and polishing department at the Muncie plant.

Conclusions with Respect to the Respondent's Relations with the I. A. M. and the Discharges of the Toolroom Employees

The I. A. M. contract was the culmination of a design on the part of the respondent to select the I. A. M. as the exclusive representative of the employees in the toolroom as a means of destroying the U. A. W., which it opposed. In its [fol. 685] persistent efforts to thwart the self-organization of its employees, the respondent, after the failure of the Association as the instrument to effectuate its purposes, coerced and induced its toolroom employees to establish the I. A. M. local by clear indications of uncompromising hostility to the U. A. W. and friendliness for the I. A. M., by assisting in the enlistment of the I. A. M. membership, and by concluding a closed-shop contract with that organization at a time when the U. A. W. had requested an exclusive bargaining contract covering all the production employees in the plant, including toolroom employees.

The respondent can not justify the assistance which it rendered the I. A. M. subsequent to August 6 on the ground that, as of that date, it had consummated the formation of the closed-shop contract. The argument does not bear inspection. Although the contract is dated August 6, the parties thereto did not actually sign it until August 11. Further, the contract expressly provides that it "shall become binding upon the signature hereto, and become effective immediately." Nor did the minds of the parties meet upon all its terms until August 11, for it was not until then that they agreed upon wage increases for 15 employees. In any case, the respondent, prior to August 6, had amply assisted the growth of a labor organization of its employees favored by it.

Inasmuch as the membership of the I. A. M. must be deemed vitiated by the interference of the respondent in the solicitation of such membership, the I. A. M. did not represent an uncoerced majority of the toolroom employees at the time of the execution of the closed-shop contract. The contract was made with a labor organization which had been assisted by unfair labor practices. For these

reasons, and because of our later finding in regard to the appropriate bargaining unit, which we hereinafter discuss in Section III, C, 1, the contract does not fall within the proviso to Section 8 (3) of the Act. It can not, therefore, operate as a justification for the discharge of the 18 toolroom employees listed in Appendix B.

Accordingly, we find that the respondent discriminated in regard to the hire and tenure of employment of the 18 toolroom employees listed in Appendix B who were discharged by the respondent because of their failure to join the I. A. M., thereby encouraging membership in one labor organization and discouraging membership in another labor organization, and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent contends that Isaac Newton Garrett, one of the 18 toolmen listed in Appendix B, quit his employment. The evidence discloses that Paul Shimer, brother [fol. 686] of the respondent's night superintendent, reported to Garrett, on the evening of August 11, that the Acme Division, in which he was employed, had shut down indefinitely. Garrett confirmed this message with the gate watchman at the plant. Consequently he did not report for work for several days. On August 19 or 20 Garrett consulted Lewis in the employment office and requested an opportunity to return to his work. Lewis told Garrett "the International Machinists Association had the closed shop," and that Garrett could not "go back unless" he "joined up with them." Therefore, as in the case of the other employees listed in Appendix B, Isaac Newton Garrett was discriminatorily discharged. His dismissal, unlike the others, occurred on August 20.

2. The production employees

The complaint alleged that the respondent discriminated against 34 named production employees in regard to their hire or tenure of employment because of their union membership or activity. As above noted, the charges with respect to 17 of these persons were dismissed at the hearing.

Of the remaining 17 employees, the Trial Examiner found that the respondent discriminated against 5 production workers by discharging them because of their union

affiliation or activity. The respondent has filed reliable evidence with the Board of substantial compliance with the recommendations of the Trial Examiner with respect to these 5 persons by settlements with them. Accordingly, the allegations in the complaint with respect to Walter Scott Garrett, Cletus Garrett, Edward Johnson, Wilbur C. Mitchell, and Maurice Slaughter, will be dismissed.

The remaining 12 employees were relatively new employees, having commenced their employment with the respondent in February or March 1937. In several instances these individuals had resumed their employment with the respondent at the time of the hearing. The evidence discloses that the respondent, in the production of automobile moldings, is engaged in a seasonal business which causes inactivity in certain departments of its Muncie plant at certain times. The record also reveals that since the acquisition of the Acme Machine Products plant in December 1936 and during the first 10 months of 1937 the respondent hired numerous new employees, requiring the elimination of many employees found inefficient or unsuitable for the available work. It also appears that in some cases, because of the disruption caused by the strike of August 25, discussed below in Section III, C, and the necessity for the preparation of new dies for the manufacture of parts for the 1938 Buick model, delay ensued in the reinstatement of certain employees. In every case but one of these 12, [fol. 687] the foreman or other supervisory employee who had selected the employee for lay-off or discharge, testified as to the reasons for his choice; and in no way, other than by testimony to the fact of membership or minor activity in the U. A. W., were these reasons shown not to have been the genuine ones. Under these circumstances, we conclude that there is not sufficient evidence in the record to show that the respondent selected these 11 production employees, namely, Carl Carmen, Isabelle Barrett, Wilbur Garrett, Catharine Long, Martha Keener, Katherine Webb, Cleta Watts Crutcher, Agnes Holland, Curtis Landers, Richard Cameron and Edward Youngman, to be laid off or discharged on the basis of their union affiliation or activity.

We find that the respondent did not discriminate in regard to the hire and tenure of employment of the 11 employees named above to discourage membership in a labor organization.

The case of Mona Armstrong, however, is different. She was employed by the respondent for the first time in February 1937 in the packing department. She joined the C. I. O. in June. In July Lewis requested Mona to circulate an Association paper among the girls in the plant for their signatures. Mona refused to comply with Lewis' wish. She wore her C. I. O. button in the shop for the first time on August 18. On that day, Warren Leet, her foreman, advised her "* * * better take it off and join up with the Company or the A. F. of L., * * * the C. I. O. wouldn't get (you) any place." Mona replied, in substance, that she had sufficient sense to follow the dictates of her own mind.

Leet had warned her on August 17 against taking an excessive number of days of leave. On the 19th, according to Leet's own testimony, he granted her permission to take the day off. Mona, however, testified she was sent home by Leet on the 19th, because of slack work and told to report on the 24th. Mona did not report to work on the 20th or the 21st. Leet extracted her card from the time rack on the 21st, and discharged her. On the 24th, when she found her card missing from the rack, Mona sought out Lewis. Lewis explained: "* * * Sorry, * * * Leet has canned you * * * He pulled your card * * * came in here and said that he couldn't use you any longer, that you said something very smart to him on the day before." Lewis also observed: "* * * if you had got those papers signed that I gave you about a month ago, you would be still working." During the strike Mona participated in the picket line. When she applied for reinstatement after the strike, Lewis reminded her that she had been discharged. Since then she has been unemployed.

We find that the respondent discharged Mona Armstrong on August 21, 1937, because of her union affiliation and activity.

[fol. 688] We further find that the respondent has discriminated against Mona Armstrong in regard to her hire and tenure of employment, thereby discouraging membership in a labor organization and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. The Refusal to Bargain Collectively

The complaint as amended alleges that on or about August 10, 1937, and thereafter, the respondent refused to bar-

gain collectively with the U. A. W., although on and prior to August 10 and at all times thereafter, the U. A. W. had been designated by a majority of the employees in an appropriate unit to represent them in collective bargaining.

1. The Appropriate Unit

Both the complaint as amended and the amended petition allege that an appropriate bargaining unit consists of all the production employees at the respondent's Muncie plant, exclusive of the buffers and metal polishers, and exclusive of foremen, supervisory officials, and office employees of a clerical nature. The I. A. M. and the respondent contend that the toolroom employees constituted a separate and distinct appropriate unit. The respondent urges also that the production employees in the Acme Division and the production employees in the Lees Division constitute two separate appropriate units.

The buffers and metal polishers have a closed-shop contract with the respondent. All parties agree that they should not be included in the unit or units found to be appropriate.

The Acme Division produces bolts and screws. In the Lees Division the respondent fabricates automobile moldings, refrigerator parts, and stenotype machines. Both divisions are housed under one roof, divided only by an aisle. Although separate checks, bearing the name of the particular division, are issued to the employees in each division, the respondent makes the distinction merely for accounting purposes. It is significant that the respondent in its negotiations with I. A. M. did not regard the toolroom as two units although it also consists of both Acme and Lees employees and makes tools for both divisions. Neither the I. A. M. nor the U. A. W. regard a division of the production employees into two separate units as appropriate. The production employees have interests in common with respect to rates of pay and conditions of work, which require a single unit for their protection in dealing with a common employer. We, therefore, reject the respondent's proposal for two separate production units as clearly untenable.

[fol. 689] The question remains whether the toolroom employees constitute an appropriate bargaining unit. The toolroom employees prepare tools and dies for use in the

production departments of the plant and are responsible for keeping the machinery of the plant in working order. Although the toolmen are more skilled and receive higher rates of pay than the production workers generally, both the U. A. W. and the I. A. M. admit to membership and in this instance endeavored to organize all of the production employees at the respondent's Muncie plant, except buffers and polishers. According to the testimony of its financial secretary, the I. A. M. Production Local No. 1200, began organizing the production employees on or about August 10. The international issued a charter to it on October 15, to bear date, September 14, 1937. While ordinarily we have regarded as controlling the free choice of a majority of the employees in a well-defined craft as to the form of organization they desire, in the present case the respondent's conduct in influencing such choice precludes the application of this doctrine in the determination of the appropriate unit or units. Furthermore, for the purposes of the Act, and under the circumstances of the present case, the division of the respondent's employees by the I. A. M. international into two locals for organizational purposes must be deemed artificial. Since the I. A. M. sought to organize the toolroom employees separately and, at approximately the same time, solicited and carried on organizational activity among production employees and continued to do so up to the time of the hearing, in fact, its method of organization must be regarded as an attempt to enroll all the respondent's production employees in direct competition with the U. A. W., which was organizing on an industrial basis. Therefore, the I. A. M. cannot be heard to maintain that the craft unit is appropriate. We also regard as significant the existence of a substantial U. A. W. membership among the toolmen in spite of the respondent's assistance in building up the present membership in the I. A. M.

For these reasons, we find that the production employees at the respondent's Muncie plant, including toolroom employees and excluding buffers and polishers and supervisory and office employees of a clerical nature, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the respondent at its Muncie plant the full benefit of their right to self-organization and collective bargaining and otherwise effectuate the policies of the Act.

2. Representation by the U. A. W. of the Majority in the Appropriate Unit

The respondent employed 577 workers in the appropriate unit on August 10, 1937. Of these, 54 employees signed [fol. 690] authorizations designating the I. A. M. as their representative for collective bargaining purposes or application cards for membership in the I. A. M. and 384 employees applied for membership in the U. A. W. on or before August 10. These figures show clearly that the U. A. W. represented a majority of the employees in the appropriate unit when the U. A. W. presented its proposed contract to the respondent.

The respondent contends that not all these employees had become members of, or had designated, the U. A. W. as their representative, since there was no showing that they had taken the U. A. W. obligation or had paid their initiation fees for membership required by the U. A. W. bylaws. We have previously held that applications for membership in a labor organization are sufficient to designate that organization as the representative of employees for purposes of collective bargaining and that the Act does not require union membership as a condition precedent to such designation.[9]

Accordingly, we find that on August 10, 1937, and at all times thereafter, the U. A. W. was the duly designated representative of the majority of the employees in a unit appropriate for collective bargaining and, pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in such unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

---

[9] Matter of Clifford M. DeKay, doing business under the trade name and style of D. & H. Motor Freight Company and International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 649, 2 N. L. R. B. 231; Matter of American Furniture Company and Textile Workers Organizing Committee, 4 N. L. R. B. 710; Matter of Zenite Metal Corporation and United Automobile Workers of America, Local No. 442, 5 N. L. R. B., No. 73; Matter of National Motor Bearing Company and International Union, United Automobile Workers of America, Local No. 76, 5 N. L. R. B., No. 66.

3. The Alleged Refusal to Bargain

On August 10, the U. A. W. committee, consisting of Gilbert Clark, an organizer, and Clay Collins, an employee, presented a proposed written contract, providing for recognition of the U. A. W. as the exclusive bargaining agency, to Westlund, the respondent's works manager, Lewis, the personnel director, and Stillwagon, the plant superintendent.[10] The committee informed the respondent's officials of the U. A. W. majority in the plant. Westlund stated he did not believe the U. A. W. represented a majority in the Lees Division. He characterized the C. I. O. as an irresponsible organization. Westlund hastily glanced at the document and expressed disapproval. To the committee's inquiry as to when the respondent's reply could be expected, Westlund answered that he could not set a date for the announcement [fol. 691] of its decision inasmuch as it was necessary to submit the U. A. W. proposals to the respondent's board of directors. Clark pointed out that a delay of one week was customary in similar negotiations with corporations necessitating submission of suggested contracts for board approval. Westlund remained adamant, refusing to set a reasonable period of time for the respondent's deliberations. The committee thereupon departed, stating that a reply would be expected from the respondent within the week.

On August 11, the next day, the respondent signed the closed-shop contract with the I. A. M. covering the toolroom employees, and, two days later, discharged more than 20 toolmen who refused to join the I. A. M.[11]

About August 15, the respondent distributed to its employees a mimeographed circular, over the signature of Vice-President and General Manager Murphy, which announced, in part:

During the past few weeks it has become increasingly apparent the high morale and spirit of cooperation which

---

[10] Westlund refused entry of Martha Keener, Luther Crutcher, William Clifford, Andrew Chandler, Rudolph Keil, and Harold Sharpe to his office, stating that the size of his room did not permit their participation in the conference.

[11] A few later, joined the I. A. M. and resumed their employment with the respondent. They are not involved in the complaint proceeding.

existed among our employees has been displaced by a general feeling of dissatisfaction and unrest. We frankly believe *this change has been brought about by the activities of outsiders,* who are unfamiliar with the various conditions surrounding our type of business.

It must be obvious that * * * continuance of * * * dissatisfaction will result inevitably in * * * loss of business to the company. * * * Should we be confronted with the necessity of making a choice between operating at a loss, or ceasing operations entirely, it would be definitely to the advantage of the company * * * to stop operations and * * * salvage * * * the assets * * * rather than * * * continue * * * unprofitable operations.

It is our understanding *strangers have come to you and have promised to secure for you certain increases in wages* and other benefits, the net result of which will be an increase in the cost of the products manufactured by this company. *We* sincerely *hope you will not be fooled by these promises,* because the management has not authorized anyone to make such promises and we will say, very frankly, the company can not fulfill same and still continue in business.

We, who are responsible for the operations of this plant, know far better than any outsider just how profitable, or non rofitable these operations are, and we will tell you it is impossible to pay the higher wage scale which has been promised. * * *

[fol. 692] *You may be definitely assured we will not at this time, or at any time in the future enter into any agreement, written or verbal, with irresponsible organizations, or associations.* There is no place in our picture for groups whose only method of securing desired results is by the use of lawlessness, violation of property rights, or violence of any kind, and *we will not operate this plant, if any of these conditions prevail* * * *. [Italics supplied.]

In the answer which it filed to the complaint in this proceeding, the respondent charged that the U. A. W. was engaged in an illegal conspiracy to seize the manufacturing plants of the nation by means of force and violence and alleged that the U. A. W. seized the respondent's Muncie plant, all under the pretense of enforcing supposed bargaining rights of its members. In view of the U. A. W.'s demand upon the respondent, embodied in its proposed contract, for recognition as exclusive bargaining representative and for wage

increases only a few days before the distribution of the mimeographed circulars and the nature of the disparaging charges contained in the respondent's pleadings in this proceeding, and in view of the fact that the respondent had just entered into a closed-shop contract with the I. A. M., there can be no reasonable doubt that the respondent had reference in its circular to the U. A. W. as the "outsider," the "strangers," the "irresponsible organization," and as the group "whose only method of securing desired results is by the use of lawlessness, violation of property rights or violence."

The U. A. W. committee, consisting of Clark and Davis, organizers, next conferred with Murphy and Westlund on August 17. Fox, a mediator for the Indiana State Labor Board was also present. Clark complained about the discharge of the toolmen. He advised the respondent's officials that the dismissals had caused unrest with a consequent desire on the part of the employees to strike. Clark proposed that the toolmen be returned to work, pending an election of employee representatives or a hearing to determine the rights of the toolroom employees discharged under the closed-shop contract. To meet Westlund's reply that the I. A. M. contract barred Clark's proposal, Fox suggested that it be submitted to the I. A. M. members in the toolroom for approval. The parties agreed. In reference to the contract which the U. A. W. had proffered on the 10th, Murphy stated that it was not acceptable in its then form. However, both sides agreed to negotiate further at another time.

The next morning, August 18, the I. A. M. members in the toolroom voted to continue the exclusion of non-I. A. M. members from the shop. Later that day, the parties resumed their talks, with Clark, Davis, and Andrew Chandler, president of the U. A. W., representing that organization, and Murphy, alone, present for the respondent. The com- [fol. 693] mittee advised Murphy that the employees were dissatisfied and persistent in their strike threat. Clark testified that Murphy, admitting that perhaps too short a notice was afforded the dismissed toolmen, agreed to indemnify them for loss of 3 weeks' wages, acknowledged U. A. W.'s majority among the production employees, and agreed to give U. A. W. sole collective bargaining rights for production employees, excluding the toolmen. Because his stenographer had left for the day, Murphy promised to reduce his undertaking to writing the following day. In his

testimony Murphy denied that he consented to recognize the C. I. O. as the exclusive bargaining agent for the respondent's production workers. However, Chandler confirms Clark's version, testifying that Murphy conceded that "there was no question in my mind but what you represented a majority." Davis did not appear as a witness.

On the following day, Murphy met with Clark and Davis. Murphy stated that in the interval he had telephoned Serrick; that Serrick had given him "hell"; that Serrick's limit was 2 weeks' pay for the discharged toolmen and recognition of the U. A. W. for its members only. Murphy produced a document embodying Serrick's ultimatum with respect to damages for the aggrieved toolmen. Davis pointed out that the existence of two labor organizations in the plant would lead to friction. Murphy replied that he knew of no other organization attempting to gain a foothold in the plant. He said: "* * * don't worry, there won't be any other organization in the production department." When Murphy's attention was called to his promise to pay 3 weeks' wages and to grant exclusive bargaining rights to the U. A. W., he claimed that the committee misunderstood him and said he was sorry, but that he was acting under Serrick's orders. As a result the dismissed toolmen accepted the agreement. However, the respondent has not paid the indemnity for which it provides. Murphy claims that the parties stipulated as a condition to payment that no strike be called and that the U. A. W. breached the alleged condition. It may be noted that such a provision, which originally appeared in the agreement, was deleted prior to its execution, by mutual consent.

The U. A. W. filed its petition herein on August 16. S. Thomas Watson, a field examiner attached to the Regional Office in the Eleventh Region, within a few days thereafter obtained the consent of the I. A. M. and the U. A. W. to an election among the production workers at the respondent's Muncie plant, the result not to affect the separate contracts relating to the toolmen and to the buffers and polishers. Murphy refused to sign such an agreement, claiming that the Lees and Acme Divisions each should be treated as an appropriate unit. We have previously determined in Section III, C, 1, that his position was unsound. However, the U. A. W. agreed with the respondent to par- [fol. 694] ticipate in such an election upon terms otherwise

similar to the I. A. M.-U. A. W. agreement referred to above. But this time the I. A. M. refused to sign.

August 25, on receiving the news that the consent election would not be conducted, the U. A. W. called a strike, which effectively closed the plant for a period of approximately 2 weeks, and established a picket line. Despite this show of strength, the respondent persisted in its denial to the U. A. W. of its right to act as exclusive bargaining representative. Both before and after the strike, Murphy rejected the U. A. W.'s offer to submit its membership application cards to the Regional Director for comparison with the respondent's pay roll to prove its majority. The respondent voiced no objection to the Regional Director acting in such capacity. Neither did it suggest any other mode of proof. Murphy claimed, however, that the U. A. W.'s cards were too old to reflect the current sentiment of the employees and expressed a fear of possible duplications in membership. In view of the fact that the U. A. W. began organizing in the plant but 2 or 3 months previously, and Murphy's statement on August 19 that he did not know of any other union in the plant among the production workers, we can give little credence to the respondent's contention that its objections to the U. A. W.'s proposal to establish its majority were made in good faith. We are convinced that, in its negotiations with the U. A. W., the respondent did not attempt to perform its duty to cooperate in determining who represented its employees, but sought to obstruct and delay the U. A. W.'s efforts to bargain for the employees. The respondent's claimed ignorance of the U. A. W.'s status, therefore, can not constitute an excuse for its failure to bargain with the U. A. W. as the employees' exclusive representative.

On August 27 the respondent filed a bill for an injunction to restrain the picketing of its plant in Muncie. The plant reopened on September 7 under a court order entered September 4 based on a truce agreement signed by the respondent and the U. A. W. on September 3. The truce provided, among other things, for the suspension of the strike "pending an election to be held at such time and place as the Labor Relations Board may determine," [12] for the return to work

[12] Our findings that the U. A. W. represented a majority of the employees in an appropriate unit renders unnecessary the conduct of such an election.

of employees on the August 10 pay roll to the extent of available work and the early conduct of negotiations by the respondent with the U. A. W. for an agreement for its members. However, the truce can not operate as satisfaction of the respondent's duty to bargain collectively.[13] The re-

"The Board is empowered * * * to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

[fol. 695] spondent's willingness to bargain with the U. A. W., which had as members a majority in the appropriate unit, as the representative of its members only does not constitute compliance with respondent's duty to bargain collectively within the meaning of Section 8 (5) of the Act, since the U. A. W. was the exclusive representative of the employees, making it incumbent upon the respondent to recognize and negotiate with it as such, upon its request.

Thereafter the respondent and the U. A. W. held several conferences for the purpose of negotiating such contract. The negotiations terminated as the result of the inability of the parties to agree on wage rates. In the meetings the respondent made counter proposals to the Union's demands, but at no time during these conferences, did it recognize the U. A. W. as the exclusive bargaining representative of its employees.

We find that the respondent, on August 10, 1937, and at all times thereafter, refused to bargain with the U. A. W. as the representative of all its employees in the appropriate unit in respect to rates of pay, wages, hours of employment, and other conditions of employment.

D. Interference, restraint and coercion

In addition to the respondent's interference with the rights of self-organization by virtue of its domination of the administration of the Association, its discriminatory discharges of the toolroom employees because of their refusal to join the I. A. M., the discriminatory discharge of Mona Armstrong for her union activities, and its refusal

[13] Section 10 (a) of the Act provides:

to bargain collectively with the U. A. W., the respondent, by other acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

At the height of the C. I. O. organizational campaign in the plant, about July 1, Lewis stated to Allie Locke, a production employee, that he need not join any labor organization in order to remain in the respondent's employ. Lewis did not deny testimony that in a conversation with Dorothy Hilton, an employee in the Association cafeteria, he stated: "* * * if the C. I. O. got in," she "wouldn't have a job." Nor did Wright, the cafeteria manager, take the witness stand to deny that he told Dorothy's mother, Mary Worster, an employee in the drill press department, that he had "a notion to discharge" Dorothy "because she belonged to the Union." Wright likewise failed to deny that he warned Bessie Price and Christena Kitchen, cafeteria employees, to remove their C. I. O. button from their persons.

After the U. A. W. presented its proposed contract, covering all production employees, to the respondent on August 10, its foremen and other supervisory employees assisted the I. A. M. in its drive for members in its production local which that union then instituted. Theodore Fouts, [fol. 696] an assistant foreman in the hand form department, on various occasions solicited the membership of Everett Collins, Elree Bryant, George Cole, and Charles Welch, employees in that department, during working hours in the plant. About a week prior to the strike Fouts informed Collins that the respondent expected the employees to strike and proposed that he enlist with the respondent under an agreement to remain at his post in the plant 24 hours a day in return for a stipulated rate of compensation plus "free eats." Fouts attempted to induce Collins to join the I. A. M. by a promise to secure for him "a ten cent raise" in pay. Fouts held in his hands, at the time, cards bearing the name of the I. A. M. at the top. Elree Bryant had a similar experience with Fouts, who told him: "If you want to join the A. F. of L. and stay in here and work, we will pay you for twenty-four hours a day for all of the time that you are in here and then free eats and a place to sleep."

About September 10, Heiss, a tool repairman, asked James Mills, an employee in the heading department, in

the presence of Truax, Mill's foreman, whether Mills was ready to join the American Federation of Labor. Truax turned to Heiss: "Give me one of those cards and I will have him sign it up."

In Section III, C, 3, above, we have set forth the contents of the mimeographed anti-U. A. W. circular which the respondent distributed to its employees.

We find that the respondent by its assistance to the I. A. M. in that organization's drive for members among the production employees at the respondent's Muncie plant, by stating that the respondent would close down rather than deal with the U. A. W., and by otherwise expressing antagonism to the C. I. O., has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The Effect of the Unfair Labor Practices on Commerce

The activities of the respondent set forth in Section III above, occurring in connection with its operations described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and have led, and tend to lead, to labor disputes burdening and obstructing commerce and the free flow thereof.

The Remedy

The respondent will be required to cease and desist from the unfair labor practices described above. We shall order the respondent henceforth to refuse to accord the Acme-Lees Welfare Association, Inc., since it does not purport to be a labor organization, or the Acme Welfare Associa- [fol. 697] tion, if it ever returns to an active existence under its old name and form or any other name or form, any recognition as a collective bargaining agency. The respondent will in addition be ordered to bargain collectively with the U. A. W. as the exclusive representative of all its production employees, including toolroom employees, and excluding buffers and polishers, supervisory and clerical employees. Since the membership of the I. A. M. was procured with the assistance of the respondent's unfair labor practices, the I. A. M.'s contract with the respondent is void and of no effect. We will, therefore, order the respondent to give no effect to it. We will order the respon-

dent to offer immediate and full reinstatement with back pay to the 18 discriminatorily discharged employees listed in Appendix B, except Grant Steele, dismissing if necessary all toolroom employees hired since August 13, 1937. Since Grant Steele testified that he had secured other employment at higher wages and did not desire to resume his former employment, we will not order his reinstatement. Since the Trial Examiner in his Intermediate Report recommended the dismissal of the complaint as to these employees, the period from the date of the Intermediate Report to the date of the Order herein will be excluded from the computation of their back pay. Grant Steele's back pay shall be computed from the date of his discharge to the date on which he commenced his employment elsewhere, which occurred one week after his discharge. We will also order the respondent to reinstate Mona Armstrong with back pay. Similarly, the period from the date of the Intermediate Report to the date of the Order herein will be excluded from the computation of her back pay.

In view of our findings in Section III, C, above, as to the appropriate bargaining unit and the designation of the U. A. W. by a majority of the respondent's employees in the appropriate unit as their representatives for the purposes of collective bargaining, it is not necessary to consider the petition of the U. A. W. for certification of representatives. Consequently the petition for certification will be dismissed.

Upon the basis of the foregoing findings of fact and upon the entire record in the proceedings, the Board makes the following:

Conclusions of Law

1. International Union, United Automobile Workers of America, Local No. 459, International Association of Machinists Tool and Die Makers Local No. 35 and Production Lodge No. 1200, are labor organizations within the meaning of Section 2 (5) of the Act, and Acme Welfare Association was a labor organization within the meaning of Section 2 (5) of the Act.

[fol. 698] 2. By its domination and interference with the administration of the Association, and by contributing support thereto, the respondent has engaged in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. The production employees, including toolroom employees, and excluding buffers and polishers and supervisory and office employees of a clerical nature, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. International Union, United Automobile Workers of America, Local No. 459, was on August 10, 1937, and at all times thereafter has been, the exclusive representative of all such employees for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with International Union, United Automobile Workers of America, Local No. 459, on August 10, 1937, and at all times thereafter, as the exclusive representative of its employees in an appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

6. By discriminating in regard to the hire and tenure of employment of Mona Armstrong and the employees listed in Appendix B, thereby discouraging membership in International Union, United Automobile Workers of America, Local No. 459, and encouraging membership in International Association of Machinists, the respondent has engaged in unfair labor practices, within the meaning of Sections 8 (3) of the Act.

7. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

Order

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Serrick Corporation, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Union, United Automobile Workers of America, Local No. 459, or [fol. 699] any other labor organization of its employees, or encouraging membership in International Association of Machinists Tool and Die Makers Local No. 35 or Production Lodge No. 1200, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment because of membership or activity in connection with any such labor organization;

(b) Recognizing or dealing with Acme-Lees Welfare, Inc., or with Acme Welfare Association, if it shall seek to act as a labor organization at any time hereafter;

(c) Urging, persuading, warning, or coercing its employees to join the International Association of Machinists Tool and Die Makers Local No. 35 or Production Lodge No. 1200, or any other labor organization of its employees, or discharging or threatening them with discharge if they fail to join such labor organization;

(d) Giving effect to its closed-shop contract, dated August 6, 1937, and executed August 11, 1937, with the International Association of Machinists, providing, however, that nothing in this Order shall preclude the respondent from hereafter making an agreement with International Association of Machinists, or any other labor organization (not established, maintained, or assisted by any action defined in the National Labor Relations Act as an unfair labor practice) requiring, as a condition of employment, membership therein, if such labor organization is the representative of the employees in an appropriate bargaining unit as provided in Section 9 (a) of said Act;

(e) Refusing to bargain collectively with International Union, United Automobile Workers of America, Local No. 459, as the exclusive representative of its production employees, including toolroom employees, and excluding buffers and polishers, supervisory and office employees of a clerical nature, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(f) Maintaining surveillance of the meetings and activities of International Union, United Automobile Workers of America, Local No. 459, or any other labor organization of its employees;

(g) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

[fol. 700] (a) Offer to the employees listed in Appendix B, except Grant Steele, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, any toolroom employees hired by the respondent since August 13, 1937;

(b) Make whole the employees named in Appendix B, except Isaac Newton Garrett and Grant Steele, for any losses of pay they have suffered by reason of their discharge, by payment to each of them of a sum of money equal to that which he would normally have earned as wages from August 13, 1937, to the date of the Intermediate Report and from the date of this Order to the date of the respondent's offer of reinstatement, less any amount earned by him during those periods which he would not have earned if working for the respondent;

(c) Make whole Isaac Newton Garrett for any losses of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of his discharge, August 20, 1937, to the date of the Intermediate Report and from the date of the Order herein to the date of the respondent's offer of reinstatement, less any amount earned by him during those periods which he would not have earned if working for the respondent;

(d) Make whole Grant Steele for any losses of pay he has suffered by reason of his discharge, by payment to him

of a sum of money equal to that which he would normally have earned as wages from the date of his discharge, August 13, 1937, to the date on which he secured other employment;

(e) Offer to Mona Armstrong immediate and full reinstatement to her former position, without prejudice to her seniority and other rights and privileges, dismissing, if necessary, any employee hired by the respondent to perform the work of such employee;

(f) Make whole Mona Armstrong for any loss of pay she has suffered by reason of her discharge, by payment to her of a sum of money equal to that which she would have earned as wages from the date of her discharge, August 21, 1937, to the date of the Intermediate Report and from the date of the Order herein to the date of the respondent's offer of reinstatement, less any amount earned by her during those periods which she would not have earned if working for the respondent;

(g) Post immediately notices to its employees in conspicuous places at its Muncie, Indiana, plant, stating (1) that the respondent will cease and desist in the manner aforesaid; (2) that the respondent's employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondent; (3) that the respondent will not require any person or present employee [fol. 701] to become or remain a member of the International Association of Machinists, Tool and Die Makers Local No. 35, or Production Lodge No. 1200, in order to secure, or continue his employment in the plant, as the case may be; (4) that the closed-shop agreement with the International Association of Machinists, dated August 6, 1937, and executed August 11, 1937, recognizing it as the exclusive representative of the toolroom employees at its Muncie plant is void and of no effect; (5) that the respondent will bargain collectively with International Union, United Automobile Workers of America, Local No. 459, as the representative of the employees in the appropriate unit; and (6) that the respondent will not discharge, lay off, or in any manner discriminate against members of International Union, United Automobile Workers of America, Local No. 459, or any person assisting said organization, by reason of such membership or assistance;

(h) Maintain such notices for a period of at least thirty (30) consecutive days from the date of posting;

(i) Notify the Regional Director for the Eleventh Region in writing within ten (10) days of this Order what steps the respondent has taken to comply herewith.

And it is further ordered that the allegations of the complaint that the respondent has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act by discriminating against the employees listed in Appendix A, except Mona Armstrong, in regard to their hire or tenure of employment be, and they are, hereby dismissed.

CHAIRMAN J. WARREN MADDEN, concurring:

I concur in the decision and in all of the opinion except that part which appears on page 23, beginning with the words "Furthermore, for the purposes of the Act," and ending with the words "that the craft unit is appropriate." I think that this language is unnecessary for the decision of this case, and that therefore no opinion should be expressed upon this subject.

APPENDIX A.

Walter S. Garrett
Maurice Slaughter
Edward Johnson
Cletus Garrett
Wilbur Garrett
Isabelle Barrett
Catherine L. Long
Carl Carmen
Martha Keener
Edward Youngman
Agnes Holland
Curtis Landers
Cleda Watts (now Crutcher)
Katherine Webb
Mona Armstrong
Richard Cameron
Wilbur Mitchell

[fols. 702-704]

APPENDIX B

Robert Bunch
Grant Steel
Chester Kirby
Herman Davis
Harold Sharpe
Charles Fensel
Erskine "Dutch" Allison
Len Jones
Levi Benn
Lon S. Cole
James Condon
Isaac Newton Garrett
Rudolph Keil
R. E. Manlove
Dwight Stiffler
Floyd Stevenson
Shelby Tolley
Francis Witmer

[fol. 705] Before the National Labor Relations Board

Cases No. C-460 and R-604

In the Matter of The Serrick Corporation and International Union, United Automobile Workers of America, Local No. 459.

Supplemental Report of Compliance

To Robert H. Cowdrill,
Regional Director for Eleventh Region
of the National Labor Relations Board:

Comes now The Serrick Corporation, Respondent in the above entitled matter, and by way of report of its compliance with the order of the National Labor Relations Board in the above entitled causes reports as follows:

1. That it will not discourage membership in the International Union, United Automobile Workers of America, Local No. 459, or any other labor organization of its employees, and that it will not encourage membership in International Association of Machinists, Tool and Die Makers Local No. 35 or Production Lodge No. 1200, or any other labor organization of its employees by discharging or re-
[fol. 706] fusing to reinstate any of its employees or in any other manner discriminate in regard to their hire or tenure of employment because of their membership or activity in connection with any labor organization.

2. That it will not recognize or deal with the Acme-Lees Welfare, Inc., or with Acme Welfare Association, if either of such Associations shall seek to act as a labor organization at any time hereafter.

3. That it will not urge, persuade, warn or coerce its employees to join the International Association of Machinists, Tool and Die Makers Local No. 35 or Production Lodge No. 1200, or any labor organization of its employees or discharge or threaten them with discharge if they fail to join such labor organization.

4. That it will not hereafter give effect to its closed shop contract dated August 6, 1937, with the International Association of Machinists. That it has notified said Union of said fact by letter, a copy of which is attached.

5. That it will not refuse to bargain collectively with the International Union, United Automobile Workers of America, Local No. 459, as the exclusive representative of its production employees, including toolroom employees and excluding buffers and polishers, supervisory and office employees of a clerical nature, in respect to rates of pay, wages, hours of employment and other conditions of employment. That it is at the present time having meetings with the Committee of said Union and negotiating in relation to said matters.

6. That it will not maintain surveillance of the meetings and activities of the International Union, United Automobile Workers of America, Local No. 459, or any other labor organization of its employees.

7. That it will not in any other manner interfere with, restrain or coerce its employees in the exercise of their right to self-organization to form, join or assist labor organizations to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection.

8. That it has reinstated all of the employees listed in Appendix "B" to the Board's order herein except Grant Steel, Robert Manlove, James Cordon, Erskine Allison, [fol. 707] Isaac Newton Garrett, Levi Benn and Shelby Tolley, to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges. That said Levi Benn and Shelby Tolley have obtained other positions and have refused reinstatement. That it has placed said Robert Manlove, James Condon, Erskine Allison and Isaac Newton Garrett on its seniority lists for reinstatement as soon as work of the type which they are qualified to do is available, and that their standing on said seniority lists, in so far as unemployed persons is concerned, is as follows:

James Condon	1
Erskine Allison	2
Robert Manlove	3
Isaac Newton Garrett	2

That no persons are working for Respondent at jobs which the above named persons are capable of performing who were employed subsequent to August 13, 1937.

9. That it has made whole the employees named in Appendix "B" except Levi Benn and Grant Steel for any losses of pay they have suffered by reason of their discharge by payment to each of them of a sum equal to that which he would normally have earned as wages from the date of his discharge to the date of the Intermediate Report herein, less any amount earned after working for Respondent. That it has paid to Grant Steel a sum of money equal to that which he normally would have earned if he had not been discharged from the date of his discharge to the date he received other employment. That it has paid the following sums to said employees named in Appendix "B" to said Report:

	Harold S. Sharpe	$615.62
	Robert A. Bunch	580.96
	Rudolph Keil	759.21
	Francis Witmer	911.41
	Floyd R. Stevenson	790.08
	Shelby M. Tolley	569.35
	Robert Manlove	193.54
	James Condon	410.65
	Lon S. Cole	772.20
[fol. 708]	Charles G. Fensel	449.95
	Erskine Allison	420.80
	Grant Steel	30.50
	Chester Kirby	873.81
	Herman Davis	645.28
	Dwight Stiffler	231.66
	Isaac Newton Garrett	99.51
	Mona Armstrong	311.88
	Len L. Jones	546.01

all as shown by the receipts of such persons hereto attached. That Levi Benn earned more money in his other employment than he would normally have earned had he been employed by Respondent, and Respondent has therefore made no payment to him.

11. That Respondent has placed Mona Armstrong on the seniority list for her department and she stands first on said list for full reinstatement to her former position, without prejudice to her seniority and other rights and privileges. That Respondent has not employed any other person to perform her work but has no work available for her at this time. That Respondent has paid to Mona Arm-

strong the sum of $311.88 in full for the wages which she would normally have earned if she had not been discharged by the Respondent on August 21, 1937, to the date of the Intermediate Report herein, as shown by her receipt hereto attached.

12. That Respondent has posted notice to its employees in accordance with the Order of said Board by its Report heretofore filed herein and will maintain such notices for a period of thirty (30) days, as provided by said Order.

The Serrick Corporation, By (s.) White & Haymond, Its Attorneys.

Mr. S. F. McDonald, International Association of Machinists, Muncie, Indiana.

Dear Sir:

Complying with the request of the Acting Regional Director of the Eleventh Region of the National Labor Relations [fol. 709-731] Board, we are writing you to formally advise you that The Serrick Corporation will not hereafter give effect to its closed shop contract, dated August 6, 1937, with the International Association of Machinists.

Very truly yours, The Serrick Corporation, By (S.) White & Haymond, Its Attorneys.

[fol. 732] In United States Court of Appeals for the District of Columbia

No. 7258

International Association of Machinists, Tool and Die Makers Lodge, No. 35, Affiliated with the International Association of Machinists, and Production Lodge No. 1200, Affiliated with the International Association of Machinists, Petitioners,

vs.

National Labor Relations Board

Minute Entry—June 6, 1939

The argument in the above entitled cause was commenced by Mr. Joseph A. Padway, attorney for petitioners, con-

tinued by Mr. Lawrence A. Knapp, attorney for respondent, and concluded by Mr. Joheph A. Padway, attorney for petitioners. Each side allowed to file supplemental memorandum if they so desire.

* * * * * * *

[fol. 733] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 7258

INTERNATIONAL ASSOCIATION OF MACHINISTS, TOOL AND DIE MAKERS LODGE, No. 35, Affiliated with the International Association of Machinists, and Production Lodge No. 1200, Affiliated with the International Association of Machinists, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition to Review and Set Aside an Order of the National Labor Relations Board

Decided November 20, 1939

Joseph A. Padway and Herbert S. Thatcher, both of Washington, D. C., for petitioners.

Charles Fahy, General Counsel, Robert B. Watts, Assistant General Counsel, and Laurence A. Knapp, Attorney, National Labor Relations Board, all of Washington, D. C., for respondent.

Before Groner, C. J., and Miller and Rutledge, JJ.

OPINION

RUTLEDGE, J.:

The Serrick Corporation, of Ohio, has a plant in Muncie, Indiana, in which it manufactures bolts and screws, automobile moldings, refrigerator parts, and stenotype machines. It is engaged in interstate commerce and has an annual pay roll in excess of one million dollars. Its relations with three

labor organizations, which we designate as indicated below,[1] are in question here. I. A. M. has appealed from findings and an order of the National Labor Relations Board (8 N. L. R. B. 621). The findings were to the effect that the employer had engaged in unfair labor practices within the [fol. 734] meaning of Sec. 8(1), (2), (3) and (5), and Sec. 2 (6) and (7), of the Wagner Act.[2] The order directed the employer to cease and desist from the unfair practices and to take specified affirmative remedial action. In general, findings and order sustained the contentions of U. A. W. Briefly, the order required the employer to cease giving effect to an alleged closed-shop contract with I. A. M. cov-

---

[1] Local 459, International Union, United Automobile Workers of America, will be called "U. A. W.," except as the context clearly indicates reference to the International Union. Both are affiliated with the Congress for Industrial Organization, which we call "C. I. O."

Lodge No. 35, International Association of Machinists, Tool and Die Makers, and Production Lodge No. 1200, are affiliated with the International Association of Machinists, and through it with the American Federation of Labor, designated "A. F. L." Lodge No. 35 and Lodge No. 1200 will be called "I. A. M.," except as specifically designated by their respective numbers, when separate treatment is required.

Affiliated also with A. F. L. is Metal Polishers, Buffers, Platers and Helpers International Union, Local 453, which will be referred to as "Local 453, Buffers and Polishers." This organization is not involved here, except by reference in some of the evidence.

[2] 29 U. S. C. A. § 158(1), (2), (3), (5), and § 152(6), (7). The latter define "commerce" and "affecting commerce." The former provide:

"It shall be an unfair labor practice for an employer——

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title.

"(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *

"(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to en-

ering the toolroom; to deal with U. A. W. as the exclusive bargaining agent of its employees, including toolmen, but excluding buffers, polishers, supervisory and clerical employees; to desist from various practices of assistance and encouragement to I. A. M. and discrimination against U. A. W.; and to reinstate and make whole certain employees improperly discharged. The employer has accepted and complied with the order. The principal issues involve the portions of the findings and order which relate to the toolroom. These held, in substance, that I. A. M. received unlawful assistance from the employer in organizing the toolroom and securing designation by it as bargaining agent; that for this and other reasons the toolroom was not a unit appropriate for collective bargaining or other purposes of the Act; and that consequently [3] the closed-shop contract with I. A. M. was invalid. I. A. M. contends that the Board acted arbitrarily in two respects: (1) in finding that I. A. M. received unlawful aid from the employer, or, stating the matter otherwise, that there was no substantial evidence to sustain the findings in this respect; and (2) in holding that the toolroom was not an appropriate unit.

I. A. M. also challenges the portions of the order which require the employer to deal exclusively with U. A. W. as representative of the production employees. This is done because the Board refused to hold an election prior to its decision on July 27, 1938, and to defer its decision pending an

---

courage or discourage membership in any labor organization: Provided, That nothing in this chapter, or in * * * any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this chapter as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective bargaining unit covered by such agreement when made.

* * *

"(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title."

---

[3] See the proviso to § 158(3), cit. supra, note 2, and text circa note 9, infra.

election, notwithstanding it was advised by I. A. M. on July 23 that a majority of the production employees had shifted affiliation from U. A. W. to I. A. M. between the hearing, which ended on November 15, 1937, and the date of the order. This contention may be disposed of briefly, before turning to the principal issues.

[fol. 735] I

At the hearing it was stipulated that U. A. W. held applications of a large majority of the production employees. Furthermore, the evidence shows that this majority had been created as early as the preceding 10th of August. No attempt was made by I. A. M. at the hearing to show that such a shift had then occurred. Nothing in the record indicates that it took place. Notice of I. A. M.'s claim of subsequent change was not given to the Board until four days prior to its decision. No effort was made, pursuant to Section 10 (e) [29 U. S. C. A. § 160 (e) (Supp. 1938)], to apply to a court for leave to adduce additional evidence. In addition to failure to exhaust this judicial remedy, two considerations support the Board's refusal to call an election in the present circumstances. First, there is nothing to indicate that the unfair practices, which the Board and (as will appear) we have found existed, were remedied until after the order was entered. Therefore, any shift in majority affiliation between the hearing and the decision, had it occurred, presumably must have been affected or effected by them. Furthermore, the case is not one in which the majority at the time of the hearing was doubtful or improperly constituted, as by the employer's aid or inclusion of ineligible members. Whatever may be the rule when such defects exist,[4] in their absence the presumption arises that the freely established majority continues until the Board has an opportunity to make its decision.[5] In its discretion it may hear additional evidence as to the majority's continued existence. But these presumptions, when sustained by the

---

[4] Cf. N. L. R. B. v. Fansteel Metallurgical Corp., 306 U. S. 240 (1939).

[5] Cf. N. L. R. B. v. Remington-Rand, Inc., 94 F. (2d) 862, 869-870 (C. C. A. 2d, 1938), cert. denied, 304 U. S. 576 (1938); N. L. R. B. v. Biles-Coleman Lumber Co., 96 F. (2d) 197, 198 (C. C. A. 9th, 1938).

facts, should prevent its refusal to do so from being arbitrary, as against mere ex parte and self-serving assertions that a shift has occurred. Any other rule would make a merry-go-round of the Act, since like representations could be made in turn following each new one by the contending unions in order to prevent or delay a decision contrary to their interests, with no other result than to maintain the proceeding in a state of indefinite suspension and indecision. This view does no more than afford the Board a reasonable opportunity to perform its functions under the Act. It does not deprive employees of the power to select their representatives by choice of the majority. If conditions have changed and a majority now wish to join a local of I. A. M., they may do so and call for an election.[6]

II

Upon the principal issues, first a preliminary and then a more complete statement of the circumstances out of which this controversy arose are required. Serrick Corporation was organized under the laws of Ohio with authority to do business in Indiana. It has a plant in Defiance, Ohio, with which we are not concerned. Late in 1936 it acquired the business of Acme Machine Products Company, of Muncie, Indiana, and in January, 1937, that of John Lees Company, of Indianapolis. It brought the Lees Company assets and [fol. 736] some of its personnel, including both managing officers and employees, to Muncie. Thereafter it operated the business derived from the two companies as a single enterprise under a single roof as the "Acme-Lees Division." It employed some 800 persons, of whom approximately 65 or more were supervisory and clerical, 63 were in the toolroom, 75 were buffers and polishers, and 577 were production employees. Prior to the merger there existed in the old Acme Company a so-called employees' organization, the Acme Welfare Association, which the company sponsored, checking off weekly dues from wages of employees who did not protest too greatly and taking active part in its affairs through executive officers. Funds were used for social and athletic purposes and operation of a cafeteria located in the plant. At the time of and following the merger, the Muncie plant was unorganized, but Serrick Corporation kept Acme

---

[6] In re Cudahy Packing Co., 13 N. L. R. B. No. 61 (1939).

Welfare Association in existence much as its predecessor had done, expanding it by including as members employees brought to Muncie from Indianapolis.

In March officials of the company began to address the Association on the subject of "outside" unions, adversely to the latter, although at the same time the company made a collective bargaining contract with Local 453, Buffers and Polishers. In May U. A. W. began an intensive plant-wide campaign to enroll all employees, except supervisory and clerical ones and buffers and polishers, all of whom were ineligible to membership. The employer immediately converted Acme Welfare into an active company union to hold employees in line and keep them out of U. A. W. The company's opposition was strenuous and determined. During June and early July numerous and persistent unfair labor practices were perpetrated. Nevertheless, U. A. W.'s campaign gained in effectiveness during June, July, August, and even in September. On August 10 it had acquired a clear majority of all eligible employees and demanded exclusive bargaining rights for them, including the toolroom. On August 16 U. A. W. filed with the Board a petition for certification under Sec. 9 (c) of the Act, as exclusive representative of production workers.[7] The climax came in a strike on August 25 because of the company's refusal to recognize and deal with U. A. W. as exclusive bargaining agency.

I. A. M. did not appear upon the scene officially until July 28. As will be shown later in detail, the company failed in its use of Acme Welfare to oppose U. A. W. and abandoned it as a company union about the middle or latter part of July. At the same time a group of toolroom employees began to discuss and promote organization of that room for I. A. M. Their efforts resulted in a meeting with an organizer for

---

[7] The petition was amended September 27 to include toolroom employees. On October 5 the Board issued a complaint against the corporation charging, among other things, that it had improperly discharged 17 production workers and 18 toolroom employees. The corporation answered denying the charges, and alleging that the discharge of the toolmen was obligatory under the closed-shop contract. On October 14 I. A. M. intervened. From October 18 to November 15 the trial examiner heard evidence, and in February, 1938, made his findings and recommendations to the Board. As to their nature, see note 8, infra.

I. A. M. on July 28, at which a narrow majority of toolmen signed I. A. M. cards. In rapid succession followed negotiations with the management, recognition and signing of the closed-shop contract covering the toolroom on August 11. The contract was antedated to August 6.

[fol. 737] Before setting forth further essential facts, a more concrete statement of the basic issues is appropriate. The nature and importance of the issues, together with the division between the Board and its trial examiner [8] and that within this court regarding them, also require a more detailed examination of the evidence than ordinarily is necessary.

III

Two basic issues are involved. Under the Wagner Act a closed-shop contract is valid only if it is made with a labor organization which is (1) "not established, maintained, or assisted" by any unfair labor practice; and (2) is the representative of the employees in the appropriate unit covered by the agreement when made.[9] Appropriateness of the unit and freedom of the union are essential and independent conditions.

The power to determine appropriateness of the unit is vested in the Board, not in the employees, the trial examiner or the courts.[10] The Board determines also whether the employer has given unlawful aid and comfort to the union. Both issues are presented here. They partially overlap but are not coterminous. Unlawful aid incapacitates a labor union to act as the statutory representative. It is relevant also to appropriateness of the unit, perhaps so far that it vitiates the unit of its own force, certainly to the extent that the Board does not act arbitrarily by considering it in determining whether the unit is appropriate. But absence of such aid does not of itself render a unit appropriate or a decision of the Board that it is not so, arbitrary. Independently of any finding concerning unfair labor prac-

---

[8] His findings and recommendations with respect to the toolroom were favorable to I. A. M.'s contentions, but the Board was unanimous in taking the opposite view. As to other matters, the examiner and the Board were in substantially complete agreement.

[9] See the proviso to § 158 (3), cit. supra, note 2.

[10] 29 U. S. C. A. § 159(b).

tices, the Board is empowered to determine the unit which is appropriate in the circumstances of the case.

IV

In the decision of questions of fact, the Board's findings are made conclusive, if supported by evidence,[11] which must be substantial.[12] But it is only convincing, not lawyers' evidence which is required. The Board is not limited to rules of evidence prevailing in courts of law or equity.[13] The evidence must be such as a reasonable mind might accept, though other like minds might not do so. The statutory mandate dispensing with judicial technicalities in procedure binds the reviewing court to the same extent as it does the Board. The review is of administrative action taken by direction of Congress according to administrative, not judicial, procedure. The reviewing court cannot reweigh the evidence in scales which a trial court would use in deciding whether to admit it. We are required to sustain the Board's [fol. 738] findings, if reasonable minds, unhampered by preconceptions derived from the technical law of evidence, might differ as to conclusions to be drawn from the evidence presented. Nor can we exclude from consideration on review evidence which the Board was entitled to take into account. We think the evidence was clearly sufficient to sustain the Board's finding that the employer gave unlawful aid to I. A. M. and to show that its decision concerning the appropriate unit was not arbitrary.

V

As to the first question, we are required to determine, preliminarily, what evidence should be taken into account. To support the view that organization of the toolroom for I. A. M. was an entirely free and spontaneous movement of the toolmen, not aided by any unfair labor practice, it is argued that what occurred in the toolroom between July 28 and August 6, when the company consented to the closed-shop provision, was wholly separate and disconnected from

---

[11] Id., § 160(e).

[12] Consolidated Edison Co. v. N. L. R. B., 305 U. S. 197, 229-230 (1938).

[13] 29 U. S. C. A. § 160(b); Consolidated Edison Co. v. N. L. R. B., cit. supra, note 12.

the remainder of the long and plant-wide controversy; that what took place elsewhere in the plant before, during and after this brief period has no bearing upon the organization for I. A. M. or upon its negotiations and agreement with the management. As petitioner states the argument, "the record is clear that there were no employer activities of any kind, coercive or otherwise, operating in any way to assist the International Association of Machinists in acquiring membership prior to the 28th of July. Since at that time the I. A. M. had obtained an uncoerced majority, any subsequent activities on the part of the employer are either irrelevant or are permissive under the Act." In effect we are asked to confine our own and the Board's consideration of the evidence to occurrences in the toolroom during a nine-day interval. We are unable to separate events so artificially from their background and consequences,[14] and from the general contemporaneous current of which they were integral parts. To do so would be not only to ignore the most significant evidence in the record, but also to go counter to the plain mandate of the statute.

VI

The toolroom episode was merely one phase of a plant-wide controversy lasting from May to October. The toolroom was geared closely to the productive work in function, physical location and human associations. Its job, described as "the beginning of production," was to keep the plant's machinery in working order. It was located in a rectangular space in the center of the single large room of similar shape which housed the entire plant and was set off from the re-

[14] The Board, consistently and with judicial approval, has considered "background" evidence in unfair practice cases, particularly when, as here, it discloses a prior hostile attitude of the employer. Pennsylvania Greyhound Lines, Inc., 1 N. L. R. B. 1, 23 (1935), aff'd., 303 U. S. 261 (1938); Wheeling Steel Corp., 1 N. L. R. B. 699, 709 (1936), enforced, 94 F. (2d) 1021 (C. C. A. 6th, 1938); National Motor Bearing Co. v. N. L. R. B., 105 F. (2d) 652 (C. C. A. 9th, 1939); Hamilton-Brown Shoe Co. v. N. L. R. B., 104 F. (2d) 49, 52 (C. C. A. 8th, 1939). Subsequent occurrences similarly have been taken into account. National Motor Bearing Co. v. N. L. R. B., supra.

mainder only by a wire fence. Toolroom workers went and came constantly among production workers. The toolroom [fol. 739] and the production department were physically adjacent, intimately associated and functionally interdependent. What affected one had immediate repercussions in the other, whether in mechanical operations or human relations. Such interdependency cannot be outweighed or disregarded merely by reason of the fact that the toolmen, on the whole,[15] were more highly skilled and paid than production workers. All were part and parcel of the same plant and process, and of the long-continued labor conflict which enveloped the whole.

In these circumstances the toolroom became a "key point" in the labor controversy. If compliant with the employer's desires, it gave the company opportunity to resist and possibly defeat a general campaign to organize the plant by undesired "invaders." The evidence, summarized by the Board in its findings, shows that the employer seized the opportunity when other means had failed. The employer's close connection with the organization of the toolroom is shown by (1) its strenuous and unrelenting campaign from May to October[16] to keep U. A. W. out of every part of its plant, regardless of employees' wishes and by almost every known kind of unfair labor practice short of physical force; (2) affirmative assistance given to I. A. M. directly and openly by the management and more subtly through its representatives in the toolroom. Without effort to distinguish "misfeasance" against U. A. W. from positive aid to I. A. M., a chronological summary of the principal events, with emphasis upon facts showing the true relation of the active employee organizers of Lodge No. 35, I. A. M., to the management, will show not only the existence of the unfair practices, but also their connection with and relevance to the toolroom and its organization.

At the time of the merger, Serrick Corporation inherited from Acme Machine Products Company (Muncie) and Jonn Lees Company (Indianapolis) not only plant, equipment and good will, but also managing officers and employees,

---

[15] The record shows that some production employees received wages equal to those generally paid in the toolroom.

[16] Unless otherwise indicated, all dates referred to were in 1937.

as well as the then innocuous employees' "social" organization, Acme Welfare. Among executives were Murphy, vice president and general manager, Westlund, works manager, and Wise, tool supervisor, who came from John Lees Company, and Lewis, personnel director (also president of Acme Welfare), who came from the Acme Company. Significantly, among John Lees Company employees inherited after long service with Murphy, Westlund and Wise at Indianapolis, were McCoy, toolroom foreman, and Byroad, Fouts, Shock, Baker, Bolander and Dininger, who (except McCoy) became the chief open organizers of the toolroom for I. A. M. Sharpe, toolroom committeeman for Acme Welfare (until July when he joined U. A. W.), came with Lewis, his schoolmate and boyhood friend, from Acme Machine Products Company. As bearing upon the alleged independence and freedom of the toolroom from employer domination, pressure and interference in lining up with I. A. M., the relations between these executives and employees require close scrutiny. The most active open organizers for I. A. M. were Fouts, Shock, Byroad and Bolander, with Baker and Dininger assisting. The first four also, together with Sharpe, were active in the company union, Acme Welfare, until it "blew up" almost contem- [fol. 740] poraneously with the entry of I. A. M. All four had worked with Murphy, Westlund and McCoy, three of them for periods extending from ten to fourteen years, Bolander for at least four years. With these facts in mind a summary of the main course of events will throw light on the question whether they acted freely and independently or as minions of the employer.

After the merger, as has been stated, the plant continued unorganized, except that Acme Welfare continued as before, Lewis maintaining his dual role as personnel director and Acme president. In February or March Lewis and Poole (Westlund's predecessor) through Acme Welfare and otherwise warned employees against "outside" unions, but at the same time the company made the collective bargaining agreement with Local No. 453, Buffers and Polishers, A. F. L. affiliate, apparently without objection or resistance.[17] In May U. A. W. began actively to organize the plant. The company responded with a vigorous, almost

[17] This agreement was not involved in this proceeding, being questioned by none of the parties.

violent, campaign to keep it out. Acme came to life, under Lewis' vivifying power, as a company union, avowedly to resist U. A. W. Executives, including Murphy and Stillwagon, plant superintendent, as well as Lewis, intervened, publicly at meetings of Acme Welfare or privately, urging employees into Acme and warning, threatening and discharging them for joining and leading U. A. W. Five U. A. W. officials were discharged in one week late in June for union activity, as the Board, on sufficient evidence, has found. Lewis had his then protégé, Sharpe, redouble efforts to line-up toolmen for Acme. The company's opposition covered the entire plant and all employees except buffers and polishers. Its anti-C. I. O. campaign continued with increasing vigor during June, July, August and September, throughout the plant, but became less obvious in the toolroom from July 15 to August 6.

Sensing the failure of Acme Welfare to accomplish its purpose, about July 1 the company decided to reorganize it. Shortly before July 15, Lewis asked Sharpe to sign up the toolroom for a new association, saying, "We are going to reorganize the organization." Fouts knew of the intended reorganization before Sharpe did, and at a time when he, Byroad, Shock and others were beginning to talk I. A. M. It did not materialize. Byroad, Fouts and Shock began discussing A. F. L. for the toolroom about the middle of July. At the same time Lewis resigned as Acme Welfare's president at Westlund's command, the company having discovered finally that it was a company union. From then on Acme Welfare faded out of the picture as a labor organization.[18] At the end of July, just as I. A. M. was becoming successful in organizing the toolroom, the company refused to sign a collective bargaining contract with Acme, because, according to Lewis, it was tendered with the suddenly "offensive" argument that it would keep C. I. O. out.

[fol. 741] Contemporaneously with the "fade-out" of Acme Welfare during the latter part of July, I. A. M.

---

[18] Except for tender of the collective bargaining contract the last of July, the association reverted to its former status of a purely "social" and "welfare" organization. In September it was incorporated, the corporation taking over its assets and functions from which the charter specifically excluded activity as a labor union.

faded in, through the efforts of Byroad, Fouts, Shock, etc., in the toolroom. Following this success, Production Lodge No. 1200, I. A. M., entered the lists early in August to contest with U. A. W. for representation of production employees. Fouts, Shock, Byroad and Baker, aided by Bolander and Dininger, actively organized the toolroom and I. A. M. Lodge No. 35, soliciting on company time and property, taking the strange straw vote,[19] making contact with McDonald, A. F. L. organizer, conducting and concluding negotiations with the management for the closed-shop contract. Byroad's reported 80 per cent majority for I. A. M. on the straw survey turned out to be 34 signers out of 63 eligible when the organization meeting was held July 28. The thirty-four included the active organizers.

With this alleged majority, Shock, Fouts, Byroad and Bolander, accompanied by McCoy and one Keil, as well as McDonald, opened negotiations with Westlund and Murphy on August 3. The proposed contract contained provisions for a 40-hour week, wages (not finally specified in detail until August 11), and a closed shop. Despite Murphy's frequently expressed hostility toward "outside" unions and his consistent refusal before and after this time to recognize a C. I. O. affiliate as a bargaining agency, Shock, supported by McCoy, "convinced" him in a single conference lasting for an hour and a half to two hours that he should accept the closed shop and blank wage provisions. He asked for a 44-hour week, was assured there would be little trouble about that, and reserved the right to submit the contract to Serrick, the company's president, in New York. On August 6 Serrick approved the contract, except for insisting on a 44-hour week, upon its first submission by Murphy. The latter telegraphed the news to Westlund, who communicated it to Shock. He passed it on at an I. A. M. meeting on the evening of August 6, which voted to accept

[19] Byroad conducted this, allegedly going from man to man, asking his preference between A. F. L. and C. I. O., recording the "votes" by tally mark on his sheet of paper. In view of the final alignment, it is unbelievable that 80% of the toolroom men indicated preference for A. F. L., as Byroad broadcast through the room, unless many of them did so with knowledge or suspicion of his relation to the management and fear of the consequences of any other answer.

the 44-hour week. The next morning Westlund was notified of the vote. On August 8 or 9 I. A. M. issued a charter to the toolroom local.

Meanwhile U. A. W. had continued organization and had secured a large majority of the production workers. On August 10, Clark, a U. A. W. organizer, and Collins, an employee, conferred with Westlund, Lewis and Stillwagon, demanding recognition for U. A. W. as bargaining agency for the plant including the toolroom, but excluding buffers and polishers. Westlund says that following the conference he notified Murphy of it by telephone. Significantly or otherwise, the I. A. M. closed-shop contract for the toolroom was signed on August 11 and antedated to August 6. Toolroom employees were notified, and on August 13 more than 20, perhaps 25, who refused to join I. A. M., were discharged. A few others then or later joined I. A. M. to preserve their jobs or secure reinstatement. On August 14 the company amended its contract with A. F. L. Local No. 453, Buffers and Polishers, to provide for a closed shop. [fol. 742] In contrast with the precipitate execution of these contracts are the negotiations with U. A. W.[20] On August 10 U. A. W. representatives were put off with inconclusive answers and indefinite arrangements for a subsequent conference. On August 15, after signing closed-shop contracts with two A. F. L. affiliates within the four previous days, Murphy distributed among all the employees a violently phrased circular[21] attacking C. I. O. and U. A. W., without specific mention of their names. Feeling began to "run high" and threats of a strike appeared. Apparently at the instance of Fox, State Labor Board Mediator, Murphy and Westlund conferred on August 17 with Clark, U. A. W. president, and Davis, local representative, regarding the discharge of U. A. W. toolmen, a proposed agreement for compensation to them for their dismissal

---

[20] That comparison of speed in negotiating and contracting with contending unions is evidentiary in showing interference or assistance, at least when considered with other acts, see Hamilton-Brown Shoe Co. v. N. L. R. B., 104 F. (2d) 49, 53 (C. C. A. 8th, 1939); N. L. R. B. v. National Motor Bearing Co., 105 F. (2d) 652 (C. C. A. 9th, 1939); Swift & Co. v. N. L. R. B., 106 F. (2d) 87 (C. C. A. 10th, 1939).

[21] See note 24, infra.

practically without notice, and recognition of U. A. W. as bargaining agency for production workers. The results of the conference again were inconclusive. At another on August 19 Murphy is said to have reported that Serrick "gave him hell" for agreeing to the proposed compensation for discharged toolmen, and also that Serrick would recognize U. A. W. only as representative for its members. This conference also came to naught.

Between August 17 and 20 a field examiner for the Board attempted to bring about a settlement and secured the consent of U. A. W. and I. A. M. to an election among production workers. Murphy refused to agree, demanding separate elections for what he called the John Lees "division" and the Acme "division." U. A. W. agreed to this, but I. A. M. declined. Obviously, here Murphy was following the policy of "divide and conquer," as he had done in the toolroom and in amending the buffers' and polishers' contract on August 14. All attempts at settlement failing, U. A. W. called a strike on August 25. The plant was closed for two weeks. The corporation maintained its refusal to recognize U. A. W. Murphy questioned its majority, demanded a list of its members, which U. A. W. declined to give him, and rejected its counterproposal for comparison of its membership cards and the company's payroll by the regional director of the Board. This conduct may be contrasted with his, Serrick's and Westlund's unquestioning acceptance of McDonald's statement that he would furnish proof of I. A. M.'s majority in the toolroom, and their acceptance of the closed-shop provision before he did so.

On August 27 the company sued in the state court for an injunction against picketing. The trial judge secured a truce and the plant was reopened September 7. Subsequent conferences between U. A. W. and executives came to naught for inability to agree on wage rates and continued refusal of the company to recognize U. A. W. as exclusive bargaining agency.

The final and conclusive evidence of the company's adamant purpose under no circumstances to recognize U. A. W. is found in the answer filed by it in this proceeding. Por-
[fol. 743] tions of it charged that C. I. O. (and U. A. W.) was engaged in a nation-wide illegal conspiracy to seize plants in various parts of the country, including the Muncie plant, under the guise of collective bargaining activity.[22]

[22] Cf. note 24, infra.

Properly stricken for the purpose of preventing introduction of testimony to sustain them, they cannot be stripped from the record as admissions of the company's fixed purpose. That was altered only by a change in the management which occurred after the hearing herein.

This mere recital of principal events discloses sufficiently the employer's determined purpose, never relaxed, to have nothing to do with U. A. W. and to use I. A. M. to keep U. A. W. out of the toolroom and the plant. The record is replete with evidence of other acts by executives and foremen which sustain this view.

Lewis warned, cajoled and threatened against the C. I. O. "invasion" and "outside" unions at Acme Welfare meetings and otherwise. In June or early July he told a meeting of Acme Welfare committeemen, "Boys, we don't want the C. I. O. in this plant. I know of a lot of things that is going on out in the plant, and * * * I have got a couple spotters up to the C. I. O. hall every meeting they have." To the association he said that C. I. O. was "merely a union coming into our plant to take over the management. We don't want nothing like that in here. If it gets in to this plant all your privileges will be taken away from you." At an association "beer party" for women, he put his feminine guests on record by taking a rising vote of "preference" between C. I. O. and Acme Welfare, after haranguing them against C. I. O. The result was almost unanimous for Acme. In July he asked Mona Armstrong to circulate an Acme solicitation paper among production workers. In August he told her, "If you had got those papers signed * * *, you would be still working." He warned Mrs. Kitchen, cafeteria employee, not to wear her C. I. O. button, saying that if Murphy or Westlund should see it, "they would feel bad about it * * * just like waving a red flag in front of a bull." He told Levi Benn, discharged from the toolroom on August 13, "Benn, I am sorry this happened. When this thing was first started it was only for a bluff and the fellows called the bluff and we had to go on and do it."[23] He advised Witmer and Sharpe in July to join I. A. M., in order to "have one organization" in the toolroom. His statement to Sharpe about having joined A. F. L. "because there is more money in it," may have been jocular, but in view of all these facts and their

[23] Cf. note 28, infra.

previous but then altered relations, Sharpe understood Lewis' intended meaning.

In addition to Murphy's activities, stated above, is Sharpe's undenied statement that Shock told him in July that he had known Murphy from boyhood, and that Murphy had said he would not recognize a C. I. O. union and would close the plant rather than deal with U. A. W.; that he (Murphy) hadn't had a vacation, would get on his yacht and take a nice fishing trip. This is confirmed by Murphy's statement to Clark between August 11 and 25, "Let them strike and get it out of their system * * * just call me up and I will close the plant down until we get it settled," followed by a similar statement to the chief of police. The most conclusive evidence of his attitude is found in the cir- [fol. 744] cular which he signed and distributed to all employees on August 15, four days and one, respectively, after signing closed-shop agreements with I. A. M. and the buffers' and polishers' union.[24]

[24] The circular deprecated the displacement of the employees' "high moral [*sic*] and spirit of cooperation" by "a general feeling of dissatisfaction and unrest," and continued:

"We frankly believe this change has been brought about by the activities of outsiders. * * * It must be obvious that * * * continuance of * * * dissatisfaction will result inevitably in * * * loss of business to the company * * * Should we be confronted with the necessity of making a choice between operating at a loss, or ceasing operations entirely, it would be definitely to the advantage of the company * * * to stop operations and * * * salvage * * * the assets * * * rather than * * * continue * * * unprofitable operations. It is our understanding strangers have come to you and have promised to secure for you certain increases in wages and other benefits. * * * We sincerely hope you will not be fooled by these promises. * * * You may be definitely assured we will not at this time, or at any time in the future enter into any agreement, written or verbal, with irresponsible organizations, or associations. There is no place in our picture for groups whose only method of securing desired results is by the use of lawlessness, violation of property rights, or violence of any kind, and we will not operate this plant, if any of these conditions prevail. * * *"

Westlund, apparently, was closed-mouthed, but he came with Murphy, Wise, Byroad, Fouts, Shock, etc., from John Lees Company, took part in the negotiations and conferences with I. A. M. and U. A. W.; supported Murphy unreservedly; angrily reproved Sharpe and Keil for not "ringing out" to discuss C. I. O. organization with him, and for continuing to discuss it afterward on company property with Clark, saying, "By ——, let them meet up-town." At his conference with U. A. W. representatives on August 10, his stenotype operator was present to take down what was said, a precaution not taken in any conference of executives with I. A. M. During a conference at his home in September he said he "did not think U. A. W. once they signed a contract would abide by it," and expressed a great preference for McDonald's attitude over Clark's.

Serrick agreed, apparently instantaneously, to the closed shop for I. A. M.; reproved Murphy in strong terms for consenting to a monetary settlement with the discharged toolmen, though he finally agreed under pressure to payment of two weeks' wages, which, however, never was made; refused at all times to recognize U. A. W. except to bargain for its own members. In line with these facts is Allison's testimony, denied by Shimer, night superintendent, of the latter's statement on July 26 that Serrick would recognize an A. F. L. organization, but not a C. I. O. one.[25]

The record contains equally abundant evidence of assistance to I. A. M. and obstruction to U. A. W. by foremen and [fol. 745] minor supervisory officials, who reflected the attitudes and purpose of the management. A few instances are summarized in the margin.[26]

---

[25] Reference will be made to only one act of Stillwagon, general superintendent. He told Mary King, in view of her refusal to sign a card for Acme Welfare: "There wasn't any organization such as the C. I. O. going to tell them how to run the shop, they knew how to run it, and they didn't need any help; that it was just subbornness * * * w[illegible] would either sign or go home, but if we went home and refused to sign, they would have to take it up with the management as to whether or not we would work."

[26] Night Superintendent Shimer's statement that "the foremen don't like the C. I. O.," accompanied by the assertion that there was "going to be quite a lay-off" and that the C. I. O. would go first, made on July 26, two days before

The connection of the company with organization of the toolroom for I. A. M. is shown most clearly by the relations of the management to the principal organizers, Byroad, Shock, Fouts, Baker, Dininger and Bolander, and the nature of their activities in its behalf.

Fouts, frequently described as "assistant foreman" in charge of the roll department, worked under Murphy, Westlund, etc., with John Lees Company for twelve years. He solicited repeatedly for Acme Welfare, then shifted suddenly to active solicitation for A. F. L. Before Sharpe resigned as toolroom committeeman for Acme Welfare, Fouts had knowledge of Lewis' plan for reorganizing it. He reported to Lewis that he "didn't see how the hell we can sell the Welfare Association to the employees in the tool-

---

I. A. M.'s toolroom organization meeting, was borne out by the facts.

Warren Leet, production foreman, told Mona Armstrong about August 18 to take off her C. I. O. badge and join the A. F. L. Wright, characterized as "boss" of the cafeteria, told Bessie Price and Mrs. Kitchen to take off their C. I. O. buttons, and later discharged both for C. I. O. affiliation and activities. Pedlow, foreman in the handforming department (production), said to Allred, who was discharged on August 25, "If you d—— fellows had sense enough to leave those badges [C. I. O.] off, the company would not be so hard on you." Earl Gregory, production foreman, asked Marjorie Stoker about August 1 if she belonged to any union yet, and said that of the two unions, "A. F. L. is best." Lynch, inspector and assistant foreman in the stenotype department, told John Hefley, "If we join the A. F. L. we get some place." Edward Griffin, production foreman of the third shift in the punch press department, told L. Collins, "If you will join the A. F. L. you can get ten cents more on the hour." Marvin Edwards, who acted as foreman for Gregory when he was away, engaged in general solicitation for A. F. L., and said to Jacob Gordon, "If you don't sign up in the A. F. L., there is liable to be a strike here by the C. I. O., and you are liable to lose three or four weeks' work." Truax, assistant night forman in the bolt shop of the production department, made remarks antagonistic to C. I. O. beginning in May, 1937, solicited for Acme Welfare as late as the last of July, for A. F. L. in September even after the strike according to the

[fol. 746] room when the committeeman himself didn't believe in it." In soliciting Levi Benn to join A. F. L., he asked, according to Benn, "if I didn't think it would be my job if I didn't join." In the light of these facts Stevenson's statement that Fouts told him, in soliciting him first for Acme Welfare and later for I. A. M., that he wanted him to join "just in order to beat the C. I. O.," and that "if I would go in and didn't want to stay, that would be all right, just as long as they got in enough to beat them out, we could all help out," is not unworthy of belief.[27]

Shock was a principal organizer of I. A. M. and became its president. He worked for John Lees Company in Indianapolis for fourteen years before going to Muncie. Ac-

---

testimony of several witnesses, and did not deny, when so charged by Joseph Conner, that he had been directed by the company to solicit for A. F. L. Lewis testified that Truax had the title of assistant foreman and supervisory functions.

Three witnesses testified without contradiction that in August immediately prior to the strike Theodore Fouts, assistant foreman in the handforming department (production), solicited them to act as strikebreakers and assumed to speak on behalf of the management in offering them additional pay as well as board and other emoluments to remain in the plant twenty-four hours a day during the anticipated strike. He solicited each of them repeatedly, and others as well, to join A. F. L. and promised wage increases for doing so. His relation, if any, to Walter Fouts, organizer of I. A. M. in the toolroom, does not appear clearly from the record. If not brothers in blood, they were such in a common cause.

McCoy, foreman of the toolroom, was an old A. F. L. man, an employee of the John Lees Company at Indianapolis for at least twelve years, aided Sharpe in signing up Bolander as an Acme Welfare member late in June, "because he [Bolander] is not allowed to hire or fire," told Sharpe during the early part of July, "If the C. I. O. gets in here, this place will go to hell," permitted active and open solicitation in the shop by A. F. L. representatives, complained because "the A. F. L. members come and tell me what they are going to do, but the C. I. O. doesn't say anything."

---

[27] Cf. note 28, infra.

cording to Sharpe, he admitted having known Murphy "since I was a kid—from what he told me he absolutely would not recognize the C. I. O." Westlund acknowledged close acquaintance with Shock dating back more than ten years when they worked together for John Lees Company. Shock also solicited for Acme Welfare before he turned to I. A. M. He told Robert Bunch during the latter part of July, "Murphy made the statement that before the C. I. O. would come in there, they would shut down the plant." He denied saying at the conference with Murphy on August 3 (when Murphy consented to the closed shop) that so far as he was concerned "after that trouble was settled, why they could tear up the contract," and Murphy confirmed his denial. But Keil, who was present apparently at Murphy's invitation, testified directly that Shock made the statement, and the testimony of three other witnesses gives strong support to Keil's assertion.[28] Again, the conflict in the evidence was for the Board to resolve.

Byroad has a history even more interesting than those of Fouts and Shock. He, too, worked for John Lees Company

---

[28] Stevenson testified that immediately after the conference on August 3 Fouts told him that "the C. I. O. was not as strong as they thought * * * The A. F. L. would beat them easily * * * They said it I would get in * * * I could drop it as soon as the trouble was over with, as they was going to do it too." Maynard, U. A. W. committeeman, testified that on September 22 he asked Westlund whether the I. A. M. representatives in presenting the proposed contract had not asserted that "after they had gotten the contract and got the C. I. O. out of the plant, kept them out of the plant, they could just tear the contract up, they wouldn't need no union there," and Westlund replied, "Well, no, not in just that many words, but the statement was made." Lewis' statement to Benn on August 13 quoted in the text *supra*, note 23, that "it was only for a bluff" confirms the testimony of Stevenson and Maynard. Westlund, on direct examination, denied Keil's statement, but on cross-examination, qualified the denial by saying he had no recollection of hearing C. I. O. mentioned. All this supports the statement of Benn, who belonged originally to U. A. W., was discharged on August 13, and lated joined I. A. M., that Acme Welfare "later developed into I. A. M."

in Indianapolis, while Westlund, McCoy, and Wise, tool supervisor, were connected with the company, and with McCoy as far back as 1916. Whether he was employed continuously by the John Lees Company from that year until the plant was removed to Muncie does not appear. At any rate, he was employed there as early as 1928 and first went to Muncie on February 6, 1937. He remained only one week, leaving and not returning until early in July. Immediately on coming back he signed first an Acme [fol. 747] Welfare card, then a C. I. O. card, but, to quote his own words, "gave them [C. I. O.] no money." According to Keil, Byroad also solicited for C. I. O. "when he first came in there, but he, for some reason or other, dropped the C. I. O. and became a sort of organizer for the A. F. L. affiliate." Within a few days after lining up with C. I. O., he discussed the situation with Shock, Fouts and Baker, and became, with the possible exception of Shock, the most active and vigorous solicitor for A. F. L., spending as much as 75 to 80 per cent of his time at this, according to some of the testimony. He not only solicited extensively and continuously on company time and in the toolroom, but collected dues at the bench where he worked. He threatened some employees, including Keil, with loss of their jobs if they did not sign up with A. F. L., cursed others for not doing so (Levi Benn), and told Sharpe: "Mac [McCoy] knows what I am doing. Mac is an old A. F. L. man himself. He wants us to get in the A. F. L., but he don't want us to have anything to do with the C. I. O." He took the so-called straw vote about July 20 and reported the alleged 80 per cent preference for I. A. M. His testimony on cross-examination concerning the contrast between the reported percentage and the majority of 34 which actually materialized was, to say the least, embarrassing. After conferring with Shock, Fouts and Baker, he was "delegated" to find an A. F. L. organizer and did so.

Byroad's peculiar relations with the management, the circumstances of his various arrivals and departures, and the nature of his activities raise the question whether he was a bona fide employee or actually an employer's representative in the guise of an employee. They call to mind forcibly Lewis' assertion that he had "a couple spotters up at C. I. O. at every meeting." Whether the statement was made before or after Byroad's July arrival, his part was consistent with such a function and with the manage-

ment's evident willingness to have it performed. From the evidence the inference is permissible that he was brought in both for purposes of espionage upon C. I. O. and to organize the toolroom for I. A. M. He came just when Acme Welfare was breaking down. He went through the motions of lining up with it and solicited others to do so. Then he shifted, nominally, to C. I. O. Just as suddenly he shunted himself to I. A. M. All this occurred within three weeks. He remained steadfast to the last shift. He was the leader in organizing for I. A. M. and became its committeeman. He was given almost complete freedom to carry on his organizing activities on company time and property. McCoy's single and none too harsh reproof came lightly and late to his ears. When the task was completed he left the employment without apparent intention of returning and after negotiations which resulted in tender of another job at his old home in Indianapolis. He came back only after the hearing had begun and at Baker's solicitation. All this may be consistent with his exercising the rights of a free and independent laborer. On the other hand, the inference is not unreasonable or arbitrary that his activities in behalf of I. A. M. were the company's activities and constituted unfair labor practices.

[fol. 748] Little further need be said concerning Bolander, Dininger and Baker. Bolander acted as foreman on the third shift, which worked at night, when McCoy was absent. He likewise worked for four years for John Lees Company before going to Muncie. He, too, joined Acme Welfare, at McCoy's instance when Sharpe solicited him. McCoy's statement that he (Bolander) "will sign right now because he is not allowed to hire and fire," shows McCoy's recognition of Bolander's status as foreman of the night shift in McCoy's absence, though it also shows that McCoy did not consider this to disqualify Bolander for membership. He permitted Wheeler to solicit and pass out A. F. L. blanks at the foreman's desk. Dininger also acted as night foreman in the toolroom, and according to McCoy's statement had power to "lay off" men, though apparently not to discharge them. He not only was active in organizing and soliciting for I. A. M. but purported to speak for the management in promising employees good rating if they would join the A. F. L.

In summary, Byroad, Shock, Fouts and Bolander combined in themselves the capacities of (1) old and trusted employees under Murphy, Westlund, Wise and McCoy at John Lees Company in Indianapolis; (2) active soliciting agents and promoters of Acme Welfare until it gave up the ghost; (3) principal organizers of the toolroom for I. A. M.; and (4), as will be shown, except for Byroad, minor supervisory officials of the company. Acme Welfare disappeared from the scene as a "labor" organization just as I. A. M. was entering through their efforts, though the conflict of the management with U. A. W. continued with rising bitterness. Contemporaneously with this change the former John Lees executives took over from Lewis, who came from Acme Products Corporation, the direction of important labor policies and negotiations. With Lewis' eclipse, Sharpe, his boyhood friend, sickened of his servile role and refused to continue in it for the new authority. But for Byroad, Shock, Fouts and Bolander no such transfer of loyalties was required. Acme Welfare was a company union. It follows necessarily that its leading promoters were company representatives. Men accustomed to such submisssion seldom regain independence overnight. The interval, if there was one, required for the transfer of allegiance by Byroad, Fouts, Shock and Bolander from Acme Welfare and the company to I. A. M. was too brief for disruption of the old and basic loyalty. The evidence supports the conclusion that it was not disrupted, but continued, though manifested in less obvious but more effective form. All that they did, therefore, is imputable to the company. Without their efforts no majority for I. A. M., nominal, assisted or otherwise, would have been created on July 28 or at any other time prior to August 11. With them, the majority was not freely and independently created.

Their relations to the management also give substance to the view that they had actual, though not officially nominal, supervisory capacity.[29] Fouts was regarded by the workers as assistant foreman. Dininger had authority to "lay off" men, according to McCoy, and he and Bolander discharged the duties of foreman in night shifts. Shock acted for McCoy in the day shift, when he was absent. Fouts, Bolander and Dininger had authority to make

[29] See note 32, infra.

[fol. 749] recommendations to the management concerning quality and performance of work by men working under them.[30] McCoy himself had little, if any, further power. According to all of the evidence, "hiring and firing" was the function primarily of Lewis, more rarely of his superiors. A suggestion for employment or discharge by foremen and subforemen so closely connected with the management is as potent, practically, as the power to "hire and fire."

VII

A further word is required concerning the antedating of the contract. Throughout negotiations a written contract was contemplated. The schedule of wages was not settled finally until August 11. I. A. M. had no charter prior to August 8 or 9, hence could make no official contract until that time. The vote taken August 6 to accept Serrick's condition of the 44-hour week was not communicated to the company until August 7. On that day, Byroad with Westlund's acquiescence announced that the company would sign a closed-shop contract when Murphy returned. The contract specifically provides that it shall be effective from the time of execution. Yet when it was signed on August 11, it was antedated to August 6. It is contended that this was done because the agreement really was made on that day. However, U. A. W.'s demand for recognition was made on August 10. The inference is equally permissible that the motive was to circumvent this demand, despite denials by Murphy and Westlund, who negotiated with both unions.

The practice of antedating contracts may be legitimate or otherwise according to varying circumstances. Whatever its effect between the parties, rights of third parties should not be affected adversely, particularly when they involve interests so important and controversial as collective bargaining and the closed shop. To stamp with judicial approval a practice so questionable would invite evasion of the statute's intended protections. The question is important in relation to assistance rendered by the employer during the interval covered by the antedating. The practice cannot legalize retroactively discharges and other aid given

---

[30] Lewis told Collins that assistant foremen who acted in the absence of foremen "recommend to hire and fire."

at a time when no contract actually exists. Whether or not an employer legally can assist a union having a closed-shop contract, his aid given when none exists is unlawful. Such a contract involves consequences for minorities far more serious than one for collective bargaining. These considerations make the practice of antedating inappropriate to a fair and proper administration of the statute.

In our view, therefore, the contract did not take effect prior to August 11. It follows that assistance given I. A. M. between that date and August 6 was unlawful. With the company's acquiescence, a general, though informal, announcement was made (by Byroad) on August 7 that the company would sign such a contract when Murphy returned. This put the company openly on the side of I. A. M. It constituted a threat to the job of every non-member of I. A. M. in the toolroom. Byroad took full advantage of the threat in vigorous solicitation between August 6 and August 11. Without doubt the threat helped to keep the [fol. 750] tenuous majority in line, if not to increase it. In its zeal to be rid of U. A. W., the management overreached itself. Permitting the premature announcement gave prohibited aid and comfort to I. A. M. The consequences of its haste cannot be overcome by the artifice employed.

VIII

We think therefore that the evidence fully sustains the findings of the Board that the employer unlawfully assisted I. A. M. to organize the toolroom and secure the closed-shop contract. The evidence is open to two possible inferences. Either the toolroom was entirely unaffected by the controversy which raged all about it, or it was in the very center of that conflict; either the toolroom employees were free from the pressure and intimidation, openly and constantly applied by the chief executive officers elsewhere throughout the plant, or they were its victims as were all others; either Byroad, Fouts, Shock, et al. suddenly recovered their independence after serving the management as far as they could in the company union, or their subservience continued when they turned to I. A. M. Only by ignoring all that occurred in the plant from May to October except what took place in the toolroom between July 28 and August 6 is the one set of inferences possible, and then only questionably so. Such limitation of judicial vision would eliminate the most re-

vealing and convincing evidence in the record. It may be permissible for an employer merely to express a preference between two unions otherwise contending freely for position as bargaining representative, although this has obvious dangers and limitations and the final authority has not so held.[31] But he cannot go further and lend a hand, openly or covertly, to one of the contestants. The basic policy of the Act is "hands off" so far as he is concerned. The statute, we think purposely, does not define the particular methods or agents by which the employer may intermeddle unlawfully. Had it done so, easy escape would have been opened from the Act's provisions. Nothing in it requires that such representation be limited to officials having any particular kind or degree of authority, such as "hiring and firing," "disciplinary power" or even "supervisory ca- [fol. 751] pacity."[32] These evidences of authority make

---

[31] It is to be emphasized that in Edison Co. v. Labor Board, 305 U. S. 197 (1938), the Supreme Court merely assumed, for purposes of discussing and refuting an argument of counsel, that it would not be an unfair labor practice for the employer merely to express a preference between two independent labor organizations seeking recognition. The language of the court (p. 230), referring to a statement made by an executive of the company at a meeting of employees that they were absolutely free to join any labor organization, was:

"Despite this statement and assuming, as counsel for the companies urges, that where two independent labor organizations seek recognition, it cannot be said to be an unfair labor practice for the employer merely to express preference of one organization over the other, by reason of the former's announced policies, in the absence of any attempts at intimidation or coercion, we think that there was still substantial evidence that such attempts were made in this case."

[32] That employees performing supervisory duties, but having no power to "hire and fire," represent the employer when they engage in conduct amounting to unfair practices is established by Zenite Metal Corp., 5 N. L. R. B. 509, 515-516, 518 (1938), enforced, N. L. R. B. v. Zenite Metal Corp., 102 F. (2d) 1006 (C. C. A. 7th, 1938), and by numerous decisions of the Board, including Semet-Solvay Co., 7 N. L. R.

more plain the connection of the actor with the employer, but their absence does not preclude the existence of such a connection. What is required is that substantial evidence show that the actor, whatever his official position, is acting in fact on behalf of the employer, not for himself or others only, and that, by whatever methods or means, the employer brings pressure to bear upon his employees which deprives them of free and independent choice. We think the evidence here sustains the Board in finding that the active organizers, Fouts, Shock, Bolander, et al., had supervisory capacity, but independently of that it also sustains the ultimate finding that they acted for and on behalf of the employer. Here there was much more than mere expression of preference. There were violent hostility and sustained obstruction toward the one, precipitate and consistent though (as was inevitable) ineptly concealed, aid and comfort to the other. The Board preferred to look at the whole

---

B. 511, 520 (1938) and Mount Vernon Car Mfg. Co., 11 N. L. R. B. 500 (1939). In Hamilton-Brown Shoe Co. v. N. L. R. B., 104 F. (2d) 49 (C. C. A. 8th, 1939), the court sustained the Board in attributing to the employer the acts of an officious citizen of the town, not connected, openly at any rate, by employment with the company, on finding acquiescence in and support of his conduct through the subsequent activity of supervisory employees, who, in turn, were not shown clearly to have the power to hire and fire. See the Board's opinion, 9 N. L. R. B. 1073 (1938). In Virginia Ferry Corp. v. N. L. R. B., 101 F. (2d) 103 (C. C. A. 4th, 1939), the court held the employer responsible for statements of its ship's captain, despite the fact that, so far as could be ascertained from the Board's findings, he did not have the power to hire and fire. In Swift & Co. v. N. L. R. B., 106 F. (2d) 87 (C. C. A. 10th, 1939), where it does not appear from either the court's opinion or the opinion of the Board [7 N. L. R. B. 269 (1938)] that the "supervisory foremen" had the power to hire and fire, the court said, "Furthermore, with respect to the acts of the supervisory foremen, the doctrine of respondent superior applies, and petitioner is responsible for the actions of its supervisory foremen, even though it had no actual participation therein." The court held that the employer under such circumstances is charged with an affirmative duty to prevent his foremen from aiding in union organization. See also,

picture, not merely a single detail. In doing so it did not act arbitrarily.

IX

It follows from what has been said that the Board did not find arbitrarily that the toolroom was not an appropriate unit. In the circumstances prevailing, the unit was subjected to the same unlawful pressures as deprived the union of its capacity for representation and the closed-shop contract of validity. That fact was proper for the Board to consider in determining whether to apply its own so-called "Globe doctrine." Whether or not the existence of such pressures of its own force vitiated the unit, it deprived the Board's refusal to apply the "Globe doctrine" [33] of any element of arbitrary character. That was peculiarly true [fol. 752] here, in view of the fact that the employer's as-

---

Consolidated Edison Co. v. N. L. R. B., 305 U. S. 197 (1938), where the evidence of employer interference and coercion was held to be sufficient, although much of this interference was by "supervisory employees" who were not shown by the Board's findings [4 N. L. R. B. 71 (1937)] to have power to hire and fire. The view taken apparently, in Ballston-Stillwater Knitting Co. v. N. L. R. B., 98 F. (2d) 758 (C. C. A. 2d, 1938), that the employee must have authority to hire and discharge in order to charge the employer with his acts appears to be contrary to the authorities cited above, and, for the reasons stated, cannot be approved.

When other evidence of the actor's agency for the employer is lacking, "supervisory" or "disciplinary" authority supplies it. But lack of such authority only makes it necessary to show the agency in other ways. It does not negative the possibility that the agency may exist.

---

[33] The doctrine takes its name from Matter of Globe Machine & Stamping Co., 3 N. L. R. B. 294 (1937). Briefly stated, it is to the effect that where the circumstances are such that the Board reasonably could conclude that either the craft or the plant unit would be appropriate for collective bargaining purposes and where either contention if unopposed would be adopted by the Board, it normally gives paramount weight to the wishes of the employees within the craft unit. Cf. Third Annual Report of the National Labor Relations Board (1938), pp. 167-174.

sistance not only aided the union before the contract "was made,"[34] but created the majority for I. A. M. on which its claim to a separate unit in the toolroom was founded.

Independently of assistance from the employer, there was evidence sufficient to sustain the Board's decision concerning the unit. Although refusal to apply the "Globe doctrine" was based in part on such assistance, two other reasons were assigned, one of which was the existence of a substantial U. A. W. minority in the toolroom. Under the statute the Board is empowered in general terms to designate an "employer unit, craft unit, plant unit or subdivision thereof."[35] That employees in a particular craft or subdivision may be more highly skilled and paid than others is merely one fact which the Board may consider with others, not a criterion. If it is disconnected in function, physical location and human associations from other departments, those facts point toward application of the doctrine. On the other hand, close integration in these respects with the remainder of the plant may indicate an opposite conclusion. The effect of designating the proposed unit upon the bargaining rights of employees in other parts of the plant is material, as is the extent to which sentiment within the unit proposed is preponderant in favor of one or another type of unit and union.[36] Here toolroom men were generally more highly skilled and paid. But their work, location and asso-

---

[34] The statute specifically requires that the unit be appropriate at the time when the closed-shop agreement is made. 29 U. S. C. A. § 158(3). As has been indicated, the effective date here was August 11, not August 6.

[35] 29 U. S. C. A. § 159(b).

[36] Assuming that Congress intended the Board's decision concerning appropriateness of the unit to be reviewable, as are its findings of fact, the review can go only to the question whether the decision is arbitrary, N. L. R. B. v. Carlisle Lumber Co., 94 F. (2d) 138 (C. C. A. 9th, 1937); N. L. R. B. v. Lund, 103 F. (2d) 815 (C. C. A. 8th, 1939), not to a weighing of "the equities" or a balancing of conveniences. The language of the court, speaking through Judge Thomas, in the latter case is pertinent: "Obviously all these provisions of the Act place a broad power of discretion, though not one that may be exercised arbitrarily, in the Board for the designation of an appropriate bargaining unit * * * The

ciations dovetailed closely with the production department. A large majority of production workers favored U. A. W. I. A. M.'s majority in the toolroom was small and tenuous. Under these conditions it was peculiarly a matter of administrative discretion whether the interests of all employees would be served best by designating a single unit composed of all or by setting the toolroom off as a separate unit. The decision in such circumstances is a delicate one and has been delegated by Congress to the Board. With propriety and without regard to the employer's activities it could be made with reason either way. That being so, the Board did not act arbitrarily and the courts should not interfere with its decision.

The order of the Board is Affirmed.

[fol. 753] DISSENTING OPINION

GRONER, C. J., dissenting:

I am unable to agree in so much of the decision as affirms the order of the Board holding invalid the closed shop contract covering the tool room workers. The opinion, as I think, spends itself upon the effort to establish the hostility of Serrick Corporation to United Automobile Workers of America (U. A. W.). Concededly, hostility existed and justified the Board's findings of unfair labor practices in the employer's efforts to sustain its old company union, but it had nothing to do with the controversy involved on this appeal. In this view, the opinion overlooks the single vital issue we have to determine—the issue involving the respective rights of two rival labor organizations whose existence is independent of the employer. For that reason, I am not concerned with the attitude of Serrick Corporation to U. A. W. The employer is not a party to this appeal. It has accepted the Board's ruling, and even before that, had abandoned support of the company union as a collective

---

question of appropriateness depends upon other factors such as unity of interest, common control, dependent operation, sameness in character of work and unity of labor relations. There may be others; but, unless the finding of the Board is clearly arbitrary upon the point, the court is bound by its finding." P. 819.

bargaining agency. Nothing that it did thereafter is shown either directly or impliedly to have had any relation to the tool room controversy. The right of International Association of Machinists (I. A. M.) Lodge 35 to represent the tool room workers was fixed before the date of its contract. A majority of this particular craft had exercised their rights under the Act to choose their representative, and this right was not challenged by the filing of the original complaint. Only by subsequent amendment was it brought into the proceedings. The Board has taken punitive action against this labor organization and its members, as to whom nothing has been charged or shown violative of the Act. The decision rests on the finding that, because the corporation had shown great hostility to U. A. W. in a contest to enroll its production force, and later had acquiesced without protest in the organization by I. A. M. of the tool room force, a separate unit, it had unfairly assisted the latter in enrolling its majority. The condemned assistance is shown to be the activity of some of the tool room men, who are called supervisory employees.

If the question turned upon the weight to be given to the evidence, I should, of course, without hesitation acquiesce in the Board's decision. But since the Board, in my opinion, has erroneously decided a question of law, the rule which binds me to accept its findings has no bearing.

The unfair labor practice found by the Board concerns the activities of six tool room employees: Fouts, Shock, Byroad, Bolander, Baker, and Dininger; and the responsibility of the employer for their acts is, as I have said, placed upon the Board's conclusion that they were supervisory employees and as such should be regarded as acting for the employer. Except for this definite finding, it is obvious the Board would have followed the recommendation of its examiner. But the admitted fact is that all of the above named employees were tool room workers and not "supervisory" in any sense which would make their organizational activities attributable to the employer. This is vouched by a stipulation filed in the record which the examiner and all of [fol. 754] counsel considered as binding until its effect was for the first time challenged by the Board's decision.[1]

---

[1] Comes now The Serrick Corporation, respondent, by White & Haymond, its attorneys, The National Labor Relations Board by Colonel C. Sawyer, regional attorney for

The findings, both of the examiner and of the Board, show that in the spring of 1937 one of the C. I. O.-affiliated unions (U. A. W.) began an intensive campaign to enroll members in the production department of the plant of Serrick Corporation. When this activity was at its height, the tool room employees, who compose a separate group of skilled machinists and receive higher wages, and whose working quarters are separated from the production department of the plant—and who are recognized in the industry as a separate unit—and so recognized by the Board,[2]—determined to join a union of their own choosing.

A majority preference for I. A. M. having been determined on July 28, 1937, a meeting with an outside organizer was held, and 34 of the 63 employees of the tool room signed application cards, paid their dues, and obtained a charter. And within a few days thereafter their representative signed a closed shop contract with the employer. The Board's examiner, who heard all of the evidence, found that the impetus to the organization under the auspices of I. A. M. came from the unwillingness of the majority to go along

---

said Board, The International Union United Automobile Workers of America, Local No. 459, by Paul Brady, its attorney, and C. F. McDonald, representing the International Association of Machinists, affiliated with the American Federation of Labor, and stipulate the following facts, to wit:

That the following list of names includes all the employees of The Serrick Corporation at its Muncie Plant * * * *with the* * * * *exception of foremen, office employees and other supervisory employees* which were on the pay roll, which pay roll included the date of July 9, 1937. * * * (Italics supplied.)

Among the names of employees other than supervisory employees appear the names of Fouts, Shock, Byroad, Bolander, Baker, and Dininger.

---

[2] This statement is conceded in the Board's findings as follows:

While ordinarily we have regarded as controlling the free choice of a majority of the employees in a well-defined craft as to the form of organization they desire, in the present case the respondent's conduct in influencing such choice precludes the application of this doctrine in the determination of the appropriate unit or units.

with U. A. W., and this unwillingness, he concluded, though agreeable to the corporation, was not inspired by any action on its part. On this basis he recommended that the contract dated August 6, 1937, should be held in all respects valid.

The Board set aside this recommendation, notwithstanding the statute itself preserves a closed shop contract made with representatives of the majority. 29 U. S. C. A. 158(3); 9 F. C. A. Tit. 29, Sec. 158(3). It took this action on the ground that the corporation had influenced the choice of the men. Except for a reference, too trivial to notice,[3] to two minor company officials—Shimer and Lewis—this charge is based upon acts of the workers themselves. True enough, the organizers were trusted employees of long standing, and because of their skill had greater responsibility than the newer men in the technical work of the tool room. But aside from this they were ordinary employees. Nothing in the evidence shows that they acted in such a supervisory capacity as to make their organization of the I. A. M. Lodge 35 attributable to their employer. See Labor Board v. Abell [fol. 755] Co., 97 F. 2d 951. Their apparent loyalty to the old company union, while it existed, of which much is said in the opinion, is nowhere shown to have been "servile". Nor is there anywhere evidence, entitled to be dignified as substantial, that after realization that the old order was to be succeeded by the new, they were influenced by anything other than their own free will in choosing the labor organization to which they would belong. Their mistaken classification by the Board as "supervisory employees" is an obvious recognition of this fact, for as I have shown, it was on this ground, namely that they represented and spoke officially for the employer, that the Board based its ruling dissolving their contract.

The opinion of the court appears to be largely influenced by the impression that the admitted hostility of the employer to the unionization of its plant by U. A. W. justifies the inference that the employer inspired and intended to inspire the tool room men to organize separately. This fancied strategy the opinion speaks of as the "policy of 'divide and conquer'," but the record does not sustain this inference, and even if it did, such partiality, without more, never has been and never ought to be held an unfair labor practice. Cf. Jefferson Electric Co. v. Labor Board, 102

---

[3] Cf. Labor Board v. Sands Mfg. Co., 306 U. S. 332, 342.

F. 2d 949, 957. If the rule were otherwise, it would afford the employer an easy method to control employee representation by simulated preference. The case we have does not turn upon any of these conditions, but rather upon the authority of Fouts and his companions to speak for the employer. If they were not authorized, then obviously their activities cannot be labeled employer activities. If the Board's classification of these men is wrong, the ruling cannot be sustained. I think the decision as to the tool room contract should be set aside.

[fol. 756] In United States Court of Appeals for the District of Columbia, October Term, 1939

No. 7258

International Association of Machinists, Tool and Die Makers Lodge No. 35, Affiliated With the International Association of Machinists, and Production Lodge No. 1200, Affiliated With the International Association of Machinists, Petitioners,

vs.

National Labor Relations Board

Judgment—November 20, 1939

Petition to Review and set aside Order of the National Labor Relations Board.

This cause came on to be heard on the transcript of the record from the National Labor Relations Board and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the order of the said National Labor Relations Board in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Rutledge, November 20, 1939.

Dissenting opinion per Mr. Chief Justice Groner.

* * * * * * *

[fol. 757] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

[Title omitted]

[File endorsement omitted]

DESIGNATION OF RECORD—Filed February 9, 1940

The Clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above entitled cause, including therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry showing argument of cause.
3. Opinion of the Court.
4. The judgment or decree.
5. This designation.
6. Clerk's certificate.

(S.) Jos. A. Padway, Herbert S. Thatcher, Attorneys for Petitioners, 321 Tower Building, Washington, D. C.

Dated: February 9, 1940.

I hereby certify that I did leave a copy of the foregoing with counsel for the Respondent on Feb. 9, 1940.

William K. Sherwood.

[fol. 758] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 759] IN SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO RECORD—Filed August 23, 1940

Come now petitioners by Joseph A. Padway and Herbert S. Thatcher, their attorneys, and the National Labor Relations Board by Francis Biddle, Solicitor General of the United States, and Charles Fahy, its General Counsel, and,

in order to limit the number of pages of the record necessary to be printed, hereby stipulate and agree:

1. That the record herein shows the facts stated in the opinion of the court below and/or in the Board's Decision and Order to be true and that the factual inferences stated by the Court and/or the Board are amply supported by substantial and competent evidence and are reasonable in the light of the whole record; except, however, that petitioners [fol. 760] reserve the right to challenge the Board's findings that Walter Fouts, Cecil B. Shock, Moses Byroad, Arthur Baker, Joseph Bolander, and Russell Dininger were supervisory employees and that petitioners reserve the right to challenge any statements in the Board's Decision which expressly state that the production employees at The Serrick Corporation's plant in Muncie, Indiana, including toolroom employees and excluding buffers and polishers and supervisory and office employees of a clerical nature, constitute a unit appropriate for the purposes of collective bargaining, and that the toolroom employees were not an appropriate unit.

2. That all statements, evidence, facts, inference, and matters which are the subject of this stipulation are agreed to be established in reference to all issues in this proceeding, in particular the issue whether the Board correctly found that The Serrick Corporation illegally exerted coercion against the United Automobile Workers of America and in favor of the International Association of Machinists on the toolroom employees and those employed in the rest of the plant.

3. That petitioners do not contest the correctness or conclusiveness of the statements, findings and inferences referred to in the paragraphs above; and anything contained in the portions of the record which are printed which tends to contradict such findings or inferences are to be disregarded as being inconsistent with the true situation disclosed by the full record.

4. That in the proceedings before the Board, petitioners [fol. 761] were afforded their full rights and privileges in regard to notice, hearing, and all other matters of procedure, under the provisions of the Constitution of the United

States, the National Labor Relations Act, and the Board's Rules and Regulations.

Dated, this 21st day of August, 1940.

International Association of Machinists, Tool and Die Makers Lodge No. 34, Affiliated With the International Association of Machinists, and Production Lodge No. 1200, Affiliated With the International Association of Machinists, by Joseph A. Padway, and Herbert S. Thatcher, Attorneys for Petitioners; National Labor Relations Board, by Francis Biddle, Solicitor General of the United States; Charles Fahy, General Counsel, National Labor Relations Board.

[fol. 761½] [File endorsement omitted.]

[fol. 762] IN SUPREME COURT OF THE UNITED STATES

PETITIONERS' DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED—Filed August 23, 1940

Now come petitioners by Joseph A. Padway, their attorney, and respectfully request and direct the Clerk of this Court to print the transcript of record as filed, except to omit:

All of page 22 through line 9 on page 32.
Line 14 on page 32 through page 33.
Line 8 on page 35 through line 18 on page 37.
Line 22 of page 38 through the fourth from the last line on page 39.
Lines 1 through 22 on page 40.
Line 19 on page 41 through line 2 on page 42.
Line 21 on page 44 through line 8 on page 45.
Line 22 on page 45 through line 34 on page 46.
Line 25 on page 48 through line 11 on page 49.
Line 18 on page 50 through line 32 on page 52.
Line 36 on page 52 through line 16 on page 53.
Line 12 on page 54 through line 25 on page 54.
The third from the last line on page 54 through the fifth from the last line on page 55.
Line 3 on page 58 through line 1 on page 60.
Lines 1 through 27 on page 61.
[fol. 763] Line 35 on page 61 through line 20 on page 62.

Line 25 on page 62 through page 63.
Line 32 on page 65 through line 10 on page 69.
Line 22 on page 71 through line 39 on page 71.
Lines 1 through 22 on page 72.
Line 37 on page 73 through line 34 on page 74.
The second from the last line on page 75 through line 18 on page 76.
Line 23 on page 76 to the bottom of page.
The last four lines of page 77 through line 31 on page 88.
The last two lines on page 89 through line 8 on page 90.
The last two lines of page 94 through line 20 on page 97.
Line 34 on page 100 through the fourth from the last line on page 103.
Lines 1 through 10 on page 104.
Line 35 on page 105 through last line of page 118.
Line 15 on page 120 through line 10 on page 125.
Line 32 on page 125 through line 33 on page 138.
The last two lines on page 138 through 27 on page 140.
Line 13 on page 145 through line 13 on page 146.
Lines 11 through 40 on page 149.
Line 30 on page 152 through line 21 on page 153.
Line 34 on page 154 through line 33 on page 155.
Line 2 on page 159 through line 32 on page 160.
The fourth from the last line on page 160 through line 24 on page 162.
All of page 163 through line 2 on page 164.
Line 5 on page 166 through line 36 on page 200.
Line 29 on page 204 through line 6 on page 223.
[fol. 764] Line 11 on page 223 through page 224.
The last three lines on page 230 through line 11 on page 233.
Lines 7 through 34 on page 241.
Line 7 on page 242 through page 251.
Line 24 on page 252 through page 264.
Line 9 on page 266 through line 30 on page 269.
Line 35 on page 269 through page 274.
Line 19 on page 276 through line 3 on page 278.
Line 34 on page 278 through line 22 on page 284.
Line 26 on page 284, through line 28 on page 285.
Line 21 on page 287 through line 16 on page 300.
The last two lines on page 300 through line 30 on page 301.
Line 34 on page 302 through line 3 on page 305.
Line 6 on page 311 through line 20 on page 320.
Line 16 on page 321 through line 35 on page 343.

5

Lines 3 through 27 on page 344.
Lines 3 through 29 on page 345.
Line 34 on page 350 through line 16 on page 357.
Line 27 on page 358 through the third from the last line on page 360.
Line 18 on page 361 through line 32 on page 363.
Line 13 on page 364 through line 22 on page 365.
Line 7 on page 366 through the fourth from the last line on page 369.
Line 30 on page 376 through line 2 on page 383.
Line 27 on page 383 through line 30 on page 385.
Line 19 on page 386 through line 18 on page 392.
Line 22 to the end of page 392.
Line 7 on page 393 through line 21 on page 394.
Line 30 on page 394 through the fourth from the last line on page 395.
[fol. 765] Line 11 on page 399 through page 402.
Line 9 on page 404 through line 33 on page 407.
Lines 11 through 30 on page 408.
The third from the last line on page 414 through the fifth from the last line on page 421.
Line 24 on page 425 through line 3 on page 430.
All of page 432 through line 16 on page 441.
Line 22 of page 445 through line 10 on page 472.
All of page 478 through line 3 on page 483.
All of page 493 through page 508.
Line 9 on page 510 through page 514.
All of page 637 through line 9 on page 641.
All of page 703 through line 17 on page 705.
Line 9 on page 709 through page 731.
Add stipulation of the parties.

Jos. A. Padway, Counsel for Petitioners, 815 15th Street, N. W., Washington, D. C.

Consented to by National Labor Relations Board.

By Francis Biddle, Solicitor General of the United States. Charles Fahy, General Counsel, National Labor Relations Board.

[fol. 765½] [File endorsement omitted.]

[fol. 766] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 1, 1940

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 44,139. U. S. Court of Appeals, District of Columbia. Term No. 16. International Association of Machinists; Tool and Die Makers Lodge No. 35, etc., Petitioners, vs. National Labor Relations Board. Petition for a writ of certiorari and exhibit thereto. Filed February 17, 1940. Term No. 16, O. T. 1940.

LANK PAGE

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 732

INTERNATIONAL ASSOCIATION OF MACHINISTS; TOOL AND DIE MAKERS LODGE No. 35, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS; AND PRODUCTION LODGE No. 1200, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF THEREON.

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
Counsel for Petitioners.

BLANK PAGE

INDEX.

Subject Index.

	Page
Petition	1
Statement of the case	2
Questions presented	7
Reasons for allowance of writ	7
Prayer	9
Brief in support of petition	11
Opinion of the court	11
Jurisdiction	11
Statement of the case	12
Specification of error	12
Argument	13
I. The employees engaging in organizational activities were not supervisory employees so as to make their actions attributable to the employer	13
II. Assuming the action of the employees was attributable to the employer, nevertheless, no activity of the employer can operate to destroy an otherwise admittedly appropriate craft unit	20
III. It is the duty of the Board at least to investigate verified claims of a change in choice of a representative made known to the Board prior to any previous certification. The Board erred in ignoring the claim and certifying a rival union representing only a small per cent of the employees as exclusive bargaining agent without holding an election	26
Conclusion	33

Cases Cited.

Consolidated Edison Co. v. *N. L. R. B.*, 59 Sup. Ct. 206	19

P

Hamilton-Brown Shoe Co. v. *N. L. R. B.*, 104 F. (2d) 49 8,
Jefferson Electric Co. v. *N. L. R. B.*, 102 F. (2d) 949..
In the Matter of Cudahy Packing Co. and *United Packinghouse Workers, etc.*, 13 N. L. R. B. 61.....
Texas & N. O. R. Co. v. *Ry. Clerks*, 281 U. S. 548....

STATUTE CITED.

National Labor Relations Act, 49 Stat., 29 U. S. C. A. 151 .....

TEXT CITED.

Third Annual Report, N. L. R. B..... 21,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No.

INTERNATIONAL ASSOCIATION OF MACHINISTS; TOOL AND DIE MAKERS LODGE No. 35, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS; AND PRODUCTION LODGE No. 1200, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable the Justices of the Supreme Court of the United States:

The petition of International Association of Machinists (hereinafter called I. A. M.), Tool and Die Makers Lodge No. 35, and Production Lodge No. 1200, affiliated with the International Association of Machinists, all unincorporated associations and labor organizations, by their attorneys,

Joseph A. Padway, and Herbert S. Thatcher, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia, entered in the above entitled cause on November 20, 1939, affirming an order of the National Labor Relations Board dated July 27, 1938.

Statement of the Case.

This case arises from the refusal of the court below to set aside an order of the National Labor Relations Board, dated July 27, 1938, pursuant to a petition requesting review of such order filed in said court by petitioners herein. The order (see R. 667-702 at 698) from which review was sought and which was affirmed below required, among other things, that the Serrick Corporation of Muncie, Indiana, cease and desist from giving effect to a collective bargaining contract dated August 6, 1937, between petitioner, Tool and Die Makers Lodge No. 35, and the company, covering the tool and die makers employed by said Serrick Corporation at its Muncie, Indiana, plant, and requiring said Serrick Corporation to recognize the International Union, United Automobile Workers of America (hereinafter called U. A. W.), Local 1590, affiliated with the C. I. O., as exclusive representative of all the production workers employed by the Serrick Corporation at its Muncie, Indiana, plant, including the highly skilled tool and die makers there employed. Under said order and decision the Board (1) illegally invalidated a mutually advantageous collective bargaining contract, (2) arbitrarily and capriciously refused to prescribe as appropriate for purposes of collective bargaining a unit consisting of all such tool and die workers employed by the said Serrick Corporation at its Muncie plant, and (3) arbitrarily refused to investigate or take action on notice given to it by petitioners prior to its decision and order that the majority, to wit 90%, of the production

employees of the Serrick Corporation had become affiliated with the petitioner, Production Lodge No. 1200.

The petitioners are labor organizations affiliated with the American Federation of Labor and enrolled employees of the Serrick Corporation at its Muncie plant—skilled tool and die craft workers, into Tool and Die Makers Lodge No. 35, and unskilled production workers into Production Lodge No. 1200.

The respondent, National Labor Relations Board, is a Governmental agency organized under an Act of Congress known as the National Labor Relations Act, 49 Stat. 449.

The Serrick Corporation is engaged in the manufacture of bolts and screws, automobile mouldings, refrigerator parts and stenotype machines. It does a large interstate business and has an annual payroll of over a million dollars.

The Company, as other similar plants, maintains a tool room in which it employs some sixty-three tool and die makers, whose duty it is to make and repair the tools and dies used in the production department of the plant. These tool room workers are highly skilled and receive a compensation considerably in excess of that paid the production workers. Their trade, involving a long apprenticeship, has long been recognized as a well defined craft. The tool room is separated from the production department by a wire fence. (See R. 157, 237-9, 270, 276 & 635).

The present controversy arises over attempts by petitioners herein, and the U. A. W., a rival labor organization, to enroll employees in the production and tool room departments of the Serrick Corporation at Muncie, Indiana, in their respective organizations. During the early summer of 1937 the U. A. W. had been conducting a campaign of organization among production employees of the Serrick Corporation. On July 28 of that year the I. A. M. began to organize the tool room employees. After forming Tool

and Die Workers Lodge No. 35, and after having enrolled a majority of the tool room employees, it entered into a closed shop collective bargaining contract with said corporation on August 6, 1937. Subsequent to the making of said contract the I. A. M. started organizing the production workers into a separate local, Production Lodge No. 1200. This organization of production workers into a separate local was done in accordance with the constitution of the I. A. M. in force for many years, which provides for separate locals for non-skilled production employees who work on machines (R. 590-593).

Upon charges being filed by the U. A. W. with the National Labor Relations Board, a complaint was issued on October 5, 1937 against the Serrick Corporation, which, among other things, alleged that the corporation had discriminatorily discharged 18 tool room employees because of their membership in the U. A. W., although such discharges were pursuant to the closed shop contract; that it had refused to bargain with the U. A. W.; and that it had by various acts of coercion and interference attempted to discourage membership in the U. A. W. and encourage membership in the I. A. M.

Prior to the filing of this complaint the U. A. W. had filed a petition for certification under Section 9(c) of the Act in which it claimed to represent a majority in a unit consisting of the production workers, *exclusive of tool room employees.* On September 27th this petition was amended to include tool room employees in the unit. The petition and complaint were consolidated for the purpose of hearing, and the I. A. M. intervened in the joint cases on October 12th. A lengthy hearing, lasting from October 18th through November 18th, was conducted by a Trial Examiner appointed by the Board. All parties participated in this hearing. The Trial Examiner filed his Intermediate Report on March 4, 1938. He found, among other things, that the

Company had interfered with the organization of *production workers* by the U. A. W.; *that the closed shop contract covering the tool room employees with the I. A. M. was valid and binding, having been entered into at a time when the I. A. M. represented an uncoerced majority of tool room employees;* that the Company had not assisted the I. A. M. in reaching this majority; that tool room employees constituted an appropriate bargaining unit.

The U. A. W. filed exceptions to this report. On July 27th, 1938, the Board handed down its decision reversing the Trial Examiner and substantiating for the most part the exceptions filed by the U. A. W. In this decision the Board invalidated the I. A. M.'s closed shop contract. The Board concluded that the I. A. M. did not represent an uncoerced majority of employees in the tool room at the time of the execution of the contract, having been assisted by activities of certain tool room employees members of the I. A. M., whom the Board termed "supervisory" and whose actions were accordingly held attributable to the employer.

The Board further found that the tool room employees did not constitute an appropriate unit, but that the appropriate unit consisted of all production employees of the Serrick Corporation, including those employees employed in the tool room. The Board stated, however, that the only reason it did not designate the tool room as an appropriate unit consisting of craft workers as it customarily had done in previous cases, and did not give the employees an opportunity to indicate the type of representative, craft or industrial, they desired by voting thereon according to the Board "Globe Doctrine"[1] was because the tool room workers had been influenced in their choice by acts of so-called supervisory employees, and because the I. A. M.

[1] Matter of Globe Machine & Stamping Co., 3 N. L. R. B. 294, 3rd Annual Report, pages 167-174.

had organized the production and tool room employees at approximately the same time, thus making the division artificial. Chairman Madden dissented from this latter reason.

The Board, without holding an election, certified the U. A. W. as the exclusive bargaining agent for all the production and tool room employees of the Serrick Corporation. This was done in spite of the fact that prior to the issuance of the decision the I. A. M. had formally notified the Board that there had been a change in the employees' choice of a representative and that the I. A. M. now represented an overwhelming majority of the production workers as well as the majority in the tool room (See R. 12-17), and in spite of the fact that an election to determine this question was requested and in fact had been expected by all parties. The Board entirely disregarded such notice of change in affiliation and did not even attempt to investigate the matters referred to by the I. A. M. in its notice.

Petitioners sought a review of this decision in the Court below.

The decision of that Court sustained in its entirety the order of the Board. The Court further held that the Board was under no obligation or duty to investigate the claim of the I. A. M. that the majority of the employees in the production department had changed their affiliation and now desired to be represented by the I. A. M., and that its certification of the U. A. W. as exclusive bargaining agent of all employees of the Serrick Corporation was proper. Chief Justice Groner dissented from that portion of the decision affirming the order of the Board holding invalid the closed shop contract covering the tool room workers. He held that the employees who engaged in solicitation were not supervisory employees in any sense of the word, but were merely ordinary employees soliciting on behalf of the union to which they belonged.

Questions Presented.

The principal issues involved in this appeal are these:

(1) On the uncontradicted evidence did the Board err in holding that the employees who were alleged to have assisted the I. A. M. in organizing the tool room workers were "supervisory employees" and that their conduct as such was attributable to the employers, and in thereby invalidating the closed shop contract of the I. A. M.?

(2) May the Board as a punitive measure refuse to prescribe an otherwise admittedly appropriate craft unit for the sole reasons (a) that the employer had influenced the choice of the employees in that unit and (b) that the parent labor organization had attempted to organize production and tool room employees at the same time?

(3) May the Board arbitrarily refuse even to investigate the claim of the I. A. M. made prior to the decision that the majority of the production workers had designated the I. A. M. as their collective bargaining agent, and certify a bargaining agent then representing only 10% of the employees?

Reasons for Allowance of Writ.

The grounds relied on by the petitioners for the allowance of the writ are:

1. The decision of the Court of Appeals for the District of Columbia is contrary to the provisions of the National Labor Relations Act, particularly section 7, thereof,[2] guaranteeing employees the right to select their own type of representative.

---

[2] Sec. 7. Employees shall the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

2. The decision, insofar as it holds the Board did not err in refusing to investigate the claim of a change of affiliation made by the I. A. M. prior to the Board order, is in conflict with a decision on the same matter involving the identical issue decided by the U. S. Circuit Court for the 8th Circuit, entitled *Hamilton Brown Shoe Company* v. *N. L. R. B.*, 104 Fed. (2d) 49.

3. The decision, insofar as it involves a determination that certain employees were "supervisory employees" and their conduct attributable to the employer, is contrary to the undisputed facts and is contrary to a stipulation entered into by all parties.

4. The case involves in its essential features the question of whether the Board has the power to disrupt and destroy craft organizations and deny skilled employees choice of representation, by refusing to prescribe craft units because the employer has allegedly committed an unfair labor practice against employees in said unit, thus penalizing employees for the acts of the employer as a punitive measure against the employer. A decision on this question is of tremendous and vital importance to all craft labor organizations throughout the country for the reason that the decision of the Board provides an easy method for the employer to control representation by simulated preference, and for the Board to destroy the craft form of labor organization.

5. The case likewise involved in its essential features the question of whether the Board has the power to invalidate collective bargaining contracts beneficial to employees and conducive to industrial peace, because of organizational activities of older and experienced employees who have no actual supervisory powers, and who are members and officers of bona fide labor organizations. The status, under the Wagner Act, of thousands of such employees who are

members of a bona fide labor organization, and speak favorably in its behalf, is involved in a determination of this question.

Prayer.

Wherefore, the petitioners respectfully pray that writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the District of Columbia, commanding that court to certify to and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, April Term, 1938, No. 7258, International Association of Machinists, Tool and Die Makers Lodge No. 35, et al., petitioners, vs. National Labor Relations Board, Respondents, and that the judgment and decree of the United States Court of Appeals for the District of Columbia may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just and your petitioners will ever pray.

International Association of Machinists, Tool and Die Makers Lodge No. 35, et al., Petitioners.

By JOSEPH A. PADWAY,
HERBERT S. THATCHER,
Counsel for Petitioners,
321 Tower Building,
Washington. D. C.

BLANK PAGE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No.

INTERNATIONAL ASSOCIATION OF MACHINISTS; TOOL AND DIE MAKERS LODGE No. 35, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS; AND PRODUCTION LODGE No. 1200, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The Opinion of the Court.

The opinion of the United States Courts of Appeals decided November 20, 1939 is printed in the record filed herein at R. 733.

Jurisdiction.

1. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code as amended.

2. This case devolves upon an interpretation of the National Labor Relations Act. The action of the Board is alleged to be in violation of said Act.

3. The decision of the United States Court of Appeals is in direct conflict with a decision on the same matter decided by another Circuit Court of Appeals.

Statement of the Case.

The foregoing petition for writ of certiorari contains a concise statement of the case and in the interest of brevity such statement will not be repeated here.

Specification of Error.

1. The United States Court of Appeals for the District of Columbia erred in finding that certain employees engaging in organizational activities on behalf of a labor organization were supervisory employees so as to make their conduct attributable to the employer, and in finding the activities of such employees sufficient to authorize nullification of a collective bargain contract entered into by the petitioners and the Serrick Corporation.

2. The Court below erred in affirming the power of the Board to refuse to designate an otherwise admittedly appropriate bargaining craft unit, for the sole alleged reasons that the employer had engaged in unfair labor practices against employees in such unit and that the labor organization requesting the unit had organized the remainder of the employees into a separate local at approximately the same time.

3. The Court below erred in upholding the action of the Board, disregarding a verified claim to a change in choice of representative by employees acquired subsequent to the hearings but prior to the decision. The decision of the Court below in this respect is contrary to the decision of

the Circuit Court of Appeals for the 8th Circuit on the same matter.

ARGUMENT.

I.

THE EMPLOYEES ENGAGING IN ORGANIZATIONAL ACTIVITIES WERE NOT SUPERVISORY EMPLOYEES SO AS TO MAKE THEIR ACTIONS ATTRIBUTABLE TO THE EMPLOYER.

The Board's order invalidated a collective bargaining contract covering the tool room employees entered into between the Serrick Corporation and Tool & Die Makers Lodge No. 35. The contract contained clauses advantageous to both parties, and its terms were conducive to industrial peace. Among other things the contract stated that "during the life of this agreement no strike shall be caused or sanctioned by the union and no lockout shall be entered upon by the employer until every peaceful means of settlement of the difficulties have been tried" (R. 8-11). The Board's reason for nullifying this contract, as stated in its decision (R. 685), was that the I. A. M. had been assisted in obtaining the requisite majority "by a corps of supervisory employees." Although the activities of these so-called supervisory employees were in no sense coercive under the meaning of Section 8 (1) of the Act, but were merely the normal incident of an organizing campaign conducted by the members of two rival labor organizations solely on behalf of such organizations, we do not at the present time press that argument. We proceed to the question of whether the conduct of these employees was attributable to the employer. This question is principally one of law and does not entail examining the lengthy record.

The "corps" of so-called supervisory employees to which the Board refers in its decision as soliciting membership in the I. A. M. consisted of four employees—Fouts, Dininger,

Bolander and Shock (Pg. 14 of the Board's Decision, R. 680). Two other tool room employees, Byroad and Baker, were also alleged to have engaged in electioneering activities, but there is no attempt to classify these two as "supervisory employees" (Pg. 15 of the decision, R. 681). These four men were members and officers of Lodge 35, all being eligible to membership under the constitution of the union. None of these employees were in any sense "supercisory employees." None had been accorded any special powers of direction or control by the employer. They were merely what is known in the tool and die workers trade as "lead men." A lead man is a tool and die maker, who, by reason of long experience, or by previous experience on a particular job, has become skilled in the method of handling new jobs that come into the shop. He determines the best method of doing the job, which tools should be used, how the job is to be set up. A lead man is not looked up to as an actual "boss," even though at times they may be so termed when directing the setup of work. So, for that matter, would an apprentice or helper call an ordinary machinist his "boss." The lead men, after having set up the work, engage in tool and die making with the other tool and die workers, unless it is a very large shop in which case they are sometimes engaged in setup or "lead" work a greater part of the day.

The Board states that Fouts, alleged to be most active on behalf of the I. A. M., was "in charge of the roll department in the tool room and worked along side of certain machinists whom he directed". As explained, his duties consisted of setting up the work and in making "rolls" for the rolling department, on which latter job he was the sole worker (R. 386), and his direction ceased once the work was set up. He worked on the first shift where either McCoy or Dominick, foreman and assistant foreman respectively, were present a great majority of the time. (There is no

charge that McCoy or Dominick engaged in any electioneering activities.)

The four men against whom solicitation was charged were merely older and more experienced employees and were hired as workers and not supervisors. They had no power to hire or fire, and no duty even to make recommendations in this respect. Although it is stated that Fouts made recommendations, this was due to his seniority standing rather than to any official position he held, and such recommendations were no different from recommendations any other employee might care to make.

Further, the Board does not claim that Bolander and Shock did any soliciting but merely stated that they stood idly by while soliciting went on, or else, as in the case of Shock, to have been one of the first to propose organizing with the American Federation of Labor.

Bolander and Dininger were not "foremen". It is very misleading for the Board to call them "foremen" on the third and second shifts, respectively. The working hours of the plant were divided into three shifts; the first, the normal and principal shift, in which some 50 of the 63 tool room employees worked, the second, an evening shift in which eight or nine of the employees worked, and the third, an early morning shift, in which four or five worked. McCoy and Dominick had complete charge of these shifts, one being in charge when the other was not there (R. 306). They would appear at various times on all three shifts, whenever possible. On the last two shifts there were not enough tool room men working to require a foreman. Although Dininger and Bolander were lead men on the latter two shifts, neither Dininger nor Bolander had any higher classification, received any higher rate of pay, nor had any greater power than other employees, other than to set up work for them.

In addition to the foregoing considerations there are uncontested exhibits and a stipulation entered into by all the parties which conclusively indicate that these employees were not "supervisory employees". Respondent's exhibits Nos. 7 & 8 (R. 509-510) lists the working employees in the tool room and designate the supervisory employees. The only persons named as supervisory employees are McCoy, foreman, and Dominick, assistant foreman. These exhibits stand unrefuted.

Of greater significance, however, is the stipulation entered into by the unions, the Labor Board, and the employer, listing the ordinary working employees in the tool room (R. 483). This stipulation *expressly excludes* "foremen, office employees and *other supervisory employees*". The names of all four of the employees whom the Board now claims to be "supervisory employees" are expressly *included* in the list. The names of McCoy and Dominick are omitted. The Board's attorney signed the stipulation and the Trial Examiner found the stipulation binding. It was not until the Board's decision that any challenge was made to it. Chief Justice Groner emphasizes the significance and binding effect of this stipulation.

The Board claims that the solicitation by Fouts and others was done "pursuant to the known desires of the employer" and therefore states that these solicitations must be attributed to the employer. The Board does not claim that there was any actual direction or order of the employer to solicit on behalf of the A. F. L. There is no evidence that any solicitation was done pursuant to any known desires of the employer. The Board arrives at the finding necessary or prerequisite to being able to attribute conduct of these employees to the employer—to wit, the finding that the employer had made known his desires in the matter—by deducing this from the very act of solicitation itself, an excellent example of circular reasoning.

It is important to bear in mind that the above alleged soliciting employees were members and officers of Lodge No. 35. When officers and members of a union solicit membership for that union, at least the *prima facie* inference would seem to be that these activities are carried on on behalf of the union, not on behalf of the employer. However, the Board places the inference the other way, and without any other supporting evidence whatsoever other than the very fact of solicitation, finds that the employer desired the American Federation of Labor.

The decision does not rely on any actually coercive or intimidating remarks of these soliciting employees and does not claim that the I. A. M. was brought into the plant at the instance of any supervisory official of the company other than the four employees we have been discussing. *On the contrary it is clear from the record and the decision that the impetus to organization came from the employees themselves* (Pg. 13 of Decision, R. 678).

It would seem that the Board, by ignoring practical realities of organizational activities, has established principles which will go far to prevent realization of the ideal of amicable industrial relations achieved through collective bargaining with bona fide labor organizations. If the activities which took place in connection with the attempted organization in this plan by two rival labor organizations are to be outlawed as unfair practices, then in nine out of ten cases where rival national organizations are contending, countless incidents of the same general type here proscribed will be found which can be used as a basis for upsetting the stable relations resulting from collective bargaining contracts. It is inevitable that even minor supervisory employees who are eligible to and members in labor organizations will speak on behalf of their organizations. In such cases, is the Board to seize upon the slightest remark made by the most minor of supervisory employees as a reason

for destroying a contractual status that has been finally reached?

It can be argued that the Board's action in nullifying the contract was beyond its power even though the four employees in question were actually supervisory employees, for the reason that nothing that was said or done by these employees was coercive in the sense of overcoming or overriding free will. It is coercion of this type which the Act seeks to prevent, not mere acts of preference. See *Texas & N. O. R. Co.* v. *Ry. Clerks,* 281 U. S. 548. As stated by the U. S. Court of Appeals for the Seventh Circuit, in *Jefferson Electric Company* v. *National Labor Relations Board,* 102 F. (2d) 949:

> "But while it is true that employer leadership through supervisory employees is condemned by the Act, and that pressure overriding the will of the employees, as a means of encouraging or discouraging membership in any labor organizations, constitutes interference with a worker's right to select his representative, it does not follow that the mere showing of a preference and acts of cooperation constitute interference with an employee in his exercise of the rights guaranteed under the Act."

As pointed out in the dissenting opinion of Chief Justice Groner, it is clear from a reading of the decision of the Board that it relies almost entirely on the admittedly antagonistic attitude of the Company toward the CIO during the spring and early summer enrollment drive of that organization, long prior to the time that the I. A. M. had made any attempt whatsoever to organize the plant and lack of similar active hostility to the I. A. M., to find employer assistance and coercion to join the I. A. M. To predicate a finding of company assistance to the I. A. M. upon a finding of prior interference with the CIO is an unwarranted procedure, denying a rival labor organization the right to

attempt organization in competition with a union which has been previously interfered with, and penalizing the union second on the scene for acts of the employer over which it had no control.

The remarks of this Court in the case of *Consolidated Edison Company* v. *N. L. R. B.*, 59 Sup. Ct. 206, are relevant to the present case. After commenting on the seriousness of upsetting collective bargaining contracts stabilizing industrial relationships, the court said:

> "Further, the Act gives no express authority to the Board to invalidate contracts with independent labor organizations. That authority, if it exists, must rest upon the provisions of Section 10 (c). That section authorizes the Board, when it has found the employer guilty of unfair labor practices, to require him to desist from such practices, 'and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.' We think that this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices, even though the Board is of the opinion that the policies of the Act might be effectuated by such an order.
>
> "The power to command affirmative action is remedial, not punitive, and is to be exercised in aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violations where those consequences are of a kind to thwart the purposes of the Act.
>
> * * * * * * *
>
> "The Act contemplates the making of contracts with labor organizations. That is the manifest objective in providing for collective bargaining. Under Section 7 the employees of the companies are entitled to self-organization, to join labor organizations and to bargain

collectively through representatives of their own choosing. The 80 per cent of the employees who were members of the Brotherhood and its locals, had that right. They had the right to choose the Brotherhood as their representative for collective bargaining and to have contracts made as to the result of that bargaining. *Nothing that the employers had done deprived them of that right.*" (Italics ours.)

II.

ASSUMING THE ACTION OF THE EMPLOYEES WAS ATTRIBUTABLE TO THE EMPLOYER, NEVERTHELESS, NO ACTIVITY OF THE EMPLOYER CAN OPERATE TO DESTROY AN OTHERWISE ADMITTEDLY APPROPRIATE CRAFT UNIT.

We come now to a proposition of gravest importance to craft organizations. Exercising nothing less than a punitive jurisdiction, the Board has laid down a principle which if permitted to stand may well afford both the Board (if it is so minded) and the employer, a method of effectively eliminating craft organizations from collective bargaining. In this case the Board has refused to designate highly skilled tool and die making employees as an appropriate unit for the purposes of collective bargaining solely for the following two reasons: (1) that the employer has assisted the I. A. M. in obtaining membership in the tool room, thus influencing the will of the employees; and (2) that the I. A. M. had organized both production and tool room employees at approximately the same time, although into separate locals (See page 23, Decision, R. 689).

Tool and die makers compose an historic craft. By reasons of skill, by reasons of specialization of abilities, by reason of the handicraftsman's pride in his work, tool and die workers have clung together in American industry as a group separate and apart from other mechanical

workers. They have received higher wages, have commanded respect and freedom in a plant, are looked up to as skilled technicians, and generally enjoy an advanced position in the field of labor. Their working quarters are usually separated from the rest of the production departments of the plant, either by being enclosed in a separate room or being set off by fences and gates, as in the present case (See R. 159, 235-237, 270, 276).

In designating a unit appropriate for collective bargaining the Board has customarily looked to factors such as these as indicating the appropriateness of my given unit. *In line with these factors, the Board, on all previous occasions in which it has been confronted with the present problem has classified the tool and die makers as a separate unit.* In its decision the Board admits:

> "* * * *While ordinarily* we have regarded as controlling the free choice of a majority of the employees *in a well-defined craft* as to the form of organization they desire, in the present case the respondent's conduct in influencing such choice precludes the application of this doctrine in the determination of the appropriate unit or units. * * *"

This is very important. It indicates that physical factors at least are sufficient to classify tool room employees into separate units to be bargained for by their own representatives.

Whenever two rival labor organizations attempt to enroll employees of a particular plant into their respective ranks and one labor organization is proceeding on a craft basis, the Board, in accordance with its established policy of looking to the actual desires of the employees as the greatest single controlling factor in designating a bargaining unit, will hold an election to let the workers indicate their wishes in the matter. This procedure is an application of what is known as the Globe Doctrine, (Pg. 168, Third Annual

Report, N. L. R. B.), and is in accordance with the dictates of Section 7 of the Act, giving employees the right to bargain collectively through representatives *"of their own choosing."* In the present case the Board denied the employees this right, contrary to Section 7 of the Act and contrary to its own Globe Doctrine. Instead it has ordered the tool room employees assimilated into the larger industrial unit.

The two reasons aforesaid are the sole reasons for its procedure in the present case. The Board in its brief and the Court below in the majority opinion attempted to add further reasons for the refusal to set apart the tool room employees, such as integration with the remainder of the plant and the fact that the I. A. M. majority was small. However, the Board in its decision, and it is only with its decision that we are concerned, places sole reliance on the reasons aforementioned. Let us examine briefly the validity of these reasons, and the consequence of upholding them.

First, as to reason number one, we may assume that the employer has influenced its employees in a particular unit to choose a craft representative as against an industrial representative. Is there any reason why this action should operate to destroy the appropriate unit? It may very well be that the employees cannot express their free choice and desire as to which type of representative—craft or industrial—they desire until after the employer has been ordered to cease and desist his practices and until after the effects of his activities have worn off. But should acts of the employer, over which neither the union nor the employees in the unit have any control, overcome all the circumstances and factors found by the Board to exist and to constitute an appropriate unit? Surely none of these circumstances are in the least changed or altered by the employer's activities. If, previous to the unfair practices, there existed a mutuality of interest by reason of skill, by reason of apprenticeship requirements, by reason of higher wages, by reason

of physical factors, these circumstances are still in existence after the unfair practices. Why should any act of coercion or discrimination on the part of the *employer* among employees in that unit operate to destroy it? The only proper concern of the Board in such cases is to see to it that the choice of the employees is exercised under fair conditions. In the present case the Board has gone to the extreme extent of penalizing not only the employer, but the union and the employees of the company who belong to that union, *and has permitted the employer's acts to destroy the unit,* and as a punitive measure turned over representation to a rival organization whom the employees may not want, to spite the employer.

This is all the more inexplicable when it is considered that *in all other cases* where unfair practices were found to have destroyed free choice, as in cases where illegal contracts have been entered into, or as in a case where an election has been won because of employer's activities, the Board has merely ordered the employer to cease such practices, and then has directed an election to be held in the future when the effects of the unfair activities shall have diminished. See 3rd Annual Report, page 143, Sec. c. In such cases it does not change the unit in which the contract was made or in which an election was held. Why is not that procedure followed in the present case? There is no difference in applicable principles. In both cases the Board is interested only in finding out what the employees want. And yet in the present case the Board has suddenly become interested only *in what the employer does not want,* and disregards both employees and the union in seeing to it that the employer does not get it, refusing the employees the right guaranteed them under Sec. 7 of the Act to choose their own representative. It is difficult to imagine a clearer case of punitive jurisdiction, condemned in the *Consolidated Edison* case. In that case it is expressly stated, and rightly

so, that nothing that *the employer* may do can deprive the employees of the right to choose their own representative for collective bargainng.

Further, it is very important to note that such a rule would afford the employer an easy method for destroying craft units by simulated assistance or preference.

The second reason advanced by the Board for refusing to designate the unit asked for by the petitioners is that the I. A. M. had chosen to organize both the tool room and the production departments at approximately the same time, thus making artificial the unit contended for, and estopping themselves from claiming separate units. It is to be noted that Chairman Madden refused to accept this reasoning, and dissented from that portion of the opinion.

In the first place it is not the fact that the I. A. M. attempted to organize both the tool room employees and the production employees at approximately the same time. Organization in the tool room had been completed and the closed shop contract entered into by August 6. It was not until August 10, by the Board's own findings, that the I. A. M. attempted to organize in the production department, and it was not until October 15 that the Production Local obtained a charter.

The Board argues that this division was artificial. Why it was artificial is not stated. For many years the I. A. M. has organized production and skilled workers into separate distinct lodges whenever the size of the plant or community warranted it. This practice is one prescribed in its constitution; it is one which it has customarily followed. See Art. A, Sec. 2 (R. 590-591, Art. A, Sec. 7 c, R. 592), and Section 6 of Art. B (R. 593), which states that in localities where there are sufficient numbers of machinists, die sinkers, tool and die makers, specialists, production workers or machine helpers employed in any one or more divisions of the trade, *separate local lodges* may be organized for the

benefit of these employees in their respective divisions. In practice the provisions of Sec. 6 have been construed to require separate local lodges wherever possible. This classification is no arbitrary act on the part of the I. A. M. Many unions are required to make such classifications, and generally they are accompanied by a difference in dues, duties and obligations. An unskilled worker in a machine shop, earning a moderate sum of money, may pay seventy cents a month as dues for membership in the production workers' union, whereas the highly skilled and higher paid craft worker may pay two dollars per month as dues for membership in his local union. The diversity of problems affecting the workers in the highly skilled crafts and the workers in the unskilled production end of the industry frequently brings about demands on the part of these workers for separate charters from the International Unions.

There are other considerations which we could dwell upon, but the foregoing will suffice to demonstrate the practical necessities which require this division.

However, regardless of its reasons, it is submitted that what the International Association of Machinists does in respect to its internal affairs, is entirely its own business. The National Labor Relations Act was not passed for the purpose of giving the Board a carte blanche to inquire into the internal workings of labor organizations and to probe their organizational policies with the end of agreeing or disagreeing therewith. Organized labor is extremely apprehensive over this policy of the Board, and it is of vital importance that the Court protect labor organizations from this outrageous interference with their internal affairs. When the National Labor Relations Act was passed organized labor was assured that there would be no such interference. On November 13th, 1935, Senator Wagner wrote a letter, which has since become a public document, to Daniel J. Tobin, General President of the International

Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, in which he gave this assurance to organized labor. We quote from this letter:

> "As author of the legislation I can say very definitely that it was never intended to permit the Labor Board to interfere in the internal affairs of labor organizations, and I do not believe there are any words in the Act conferring such power."

We therefore earnestly request this Honorable Court to grant this writ so that this problem of such momentous consequence to organized labor may receive the consideration of the Court.

Even worse is the Board's attempt to invoke an estoppel doctrine as against a bona fide labor organization. What relevancy to the establishment of a unit or units appropriate for collective bargaining purposes is there in the fact that the I. A. M. proceeded to organize in part on a craft and in part on an industrial basis in competition with another organization which was choosing to bargain entirely on an industrial basis? Does the fact of rivalry or competition make the craft unit any less or more appropriate?

III.

IT IS THE DUTY OF THE BOARD AT LEAST TO INVESTIGATE VERIFIED CLAIMS OF A CHANGE IN CHOICE OF A REPRESENTATIVE MADE KNOWN TO THE BOARD PRIOR TO ANY PREVIOUS CERTIFICATION. THE BOARD ERRED IN IGNORING THE CLAIM AND CERTIFYING A RIVAL UNION REPRESENTING ONLY A SMALL PER CENT OF THE EMPLOYEES AS EXCLUSIVE BARGAINING AGENT WITHOUT HOLDING AN ELECTION.

It is submitted that the Board has erred in ignoring the existing status of representation among employees of the

Serrick Corporation, in ordering the employer to bargain exclusively with an organization which no longer represents a majority, and in refusing to conduct an election as expected and requested. The present argument relates to and challenges Sections 1 (e) and 2 (g) (5) of the Board's order (R. 699-700).

The question raised is a practical one, particularly in view of the long period of time which customarily elapses between the filing of charges and the issuance of a decision in a contested case. Is the mere filing of charges under Section 10 of the National Labor Relations Act, and the issuing of a complaint thereunder, to be held to crystallize the employer-employee relationship as of the time of the alleged unfair labor practices? Are the employees to be forestalled from exercising their right of selecting a representative of their own choosing and prevented from changing their affiliation, even in the face of a considerable lapse of time?

The original petition for certification was filed August 16, 1937. During the hearings on the petition and charges it was stipulated that the U. A. W. had 471 signed application cards, and the I. A. M. 298, among production employees (R. 491). However, this stipulation was entered into for the purpose of avoiding any delay that would arise from checking and rechecking the cards, and it was stipulated only that the parties could present the cards that each claimed, not that the cards were genuine or would be determinative of the issue concerning representation. Both sides believed that the other had secured its membership improperly, and for that reason it was distinctly understood that an election would be held to settle the controversy respecting representation. It should be noted that the stipulation refers only to signed cards and does not state that either had a majority representation. The agreement before Circuit Judge Guthrie, of Muncie, Indiana, in which it was

stipulated by parties to the present case, in order to settle a strike over representation then pending, that the parties would abide by the result of an election to be conducted by the Board in the present case, seemed to them binding and they at all times expected an election to be held (R. 225, 312, 441).

The Board did not decide the case until July 27, 1938. During this period of almost a year both of the rival unions proceeded with organizational activities in anticipation of the election expected by all parties in accordance with the strike settlement stipulation before Circuit Judge Guthrie, until the I. A. M. obtained a 90% majority among production employees. This was accomplished several months prior to the time the Board decided the case and the employer was notified of the shift in membership from the U. A. W. to the I. A. M. Regardless of this notification, however, the U. A. W. had obtained a contract from the company recognizing it as exclusive bargaining agent. This was done on July 15, 1938. Immediately thereafter the I. A. M. issued a vigorous protest to the Board by telegram, and by verified statement and affidavit, in which C. F. McDonald, Grand Lodge Representative of I. A. M. set forth, under oath, the fact that a change in representation had occurred, that the I. A. M. represented a majority. Finally a lengthy letter to the same effect was written by Counsel of the I. A. M. to the Board. The Board was asked to investigate this claim and to take appropriate action thereon (R. 12-17).

The Board, however, refused even to investigate the claim of the I. A. M. It is submitted that the Board acted arbitrarily in certifying the U. A. W. as exclusive representative of all production employees on the face of the verified notification and strenuous protest made with it prior to its decision. The court below upheld the Board's action in this respect, stating as reasons, first, that any

shift in affiliation might have been occasioned by the employer's unfair practices in favor of the I. A. M. (although the employer entered into an exclusive contract with the U. A. W. thereby favoring that organization, not the I. A. M.) and second, that at the time of the hearing there was no doubt as to the majority and that subsequent "ex parte and self-serving assertions that a shift has occurred * * * would make a merry-go-round of the Act" since 'like representations could be made in turn following each new one by the contending unions in order to prevent or delay a decision contrary to their interests * * *." It should be noted, as before stated, that there was never an election in this case and all parties expected one and the stipulation called for one. (See R. 225, 312, 431 & 441).

This holding is directly opposed to a holding of the Eighth Circuit in the case of the *Hamilton Brown Shoe Company* v. *National Labor Relations Board,* 104 F. (2d) 49. In that case a situation identical to the present one existed. Subsequent to the hearing but prior to the decision, a change in representatives from the C. I. O. to the A. F. L. had occurred. The Board was notified of this change by letter and by petition. The Board ignored the notification and certified the C. I. O. union as the exclusive bargaining agent. The court held such conduct arbitrary and contrary to the letter and spirit of the Act. The court stated:

> "The Supreme Court, in Consolidated Edison Co. v. National Labor Relations Board, *supra,* held that the refusal of the Board to permit the employers to adduce certain additional testimony which could have been received without undue delay, was unreasonable and arbitrary. Having in mind that it is the fundamental policy of the Act to permit employees freely to choose their representatives, it follows that the employees have a right to change their choice, and when that fact has been brought sharply to the attention of the Board,

as in this case, it was, *we think, the duty of the Board to investigate the claim.* (Italics ours)

* * * * * * *

"So, in the instant case, the Board, after giving effect to its order to restore the *status quo* by reinstating the employees wrongfully discharged, and by disestablishing the company union, and requiring the employer to cease and desist from recognizing such union as a bargaining agency, should settle the question as to representation by requiring an election. We are of the view that it would be arbitrary and unfair, and not in keeping with either the letter or the spirit of the Act, to require the employer and its employees to conduct their negotiations through an agency not fairly representing a majority of the employees. In the face of the record as it stands, it can not be assumed that the Union is now the accredited representation of the employees, but the showing made, and it stands without dispute, is at least sufficient to require investigation and to cause a court of equity to inquire whether an order requiring both the employer and the employees to recognize the Union as the bargaining agency should be enforced in the face of circumstances making such enforcement unwise, if not illegal. A court of equity will not do useless, unjust, or unequitable things. In re Hawkins Mortgage Co. (C. C. A. 7) 45 Fed. (2d) 937. Courts do not deal with abstractions. The proceedings here are substantially proceedings in equity in that equitable rules are applicable. National Labor Relations Board v. Cherry Cotton Mills (C. C. A. 5) 98 Fed. (2d) 4444. This court is granted power to modify orders of the Board. (Section 10(f))."

The decisions of the two circuits are in conflict. The factual situations cannot be differentiated. Which view is correct? It is submitted that the theory and the reasoning of the Eighth Circuit is more consonant to the spirit and purpose of the Act and more in accord with practical realities. In fact only recently the Board itself has conceded

the unreliability of certifications based on cards and has decided that the best policy is to hold an election. In the Matter of The Cudahy Packing Company and United Packinghouse Workers of America, Local No. 21, of the Packinghouse Workers Organizing Committee (CIO). Case No. R-1318, July 12, 1939, (13 N. L. R. B. No. 61), the Board said:

> "* * * We are thus faced with conflicting claims as to which of two labor organizations, each designated by a substantial number of the employees involved, is entitled, under the Act, to represent all of them. Our determination of representatives looks to the initiation of collective bargaining between the Company and its employees. We believe that since each of two contesting labor organizations has proved substantial adherence among the employees the bargaining relations which result will be more satisfactory from the beginning if the doubt and disagreement of the parties regarding the wishes of the employees is, as far as possible, eliminated. Although in the past we have certified representatives without an election upon a showing of the sort here made, we are persuaded by our experience that the policies of the Act will best be effectuated if the question of representation which has arisen is resolved in an election by secret ballot. We shall accordingly, direct that such an election be held.
>
> "It should be noted that we are not here confronted with the necessity of deciding, upon the testimony and documentary evidence in the record, whether on the date of an alleged refusal to bargain, the Union represented a majority of the employees in the appropriate unit. * * * We are here concerned with establishing representatives for future bargaining purposes, and under the circumstances we think that such future bargaining will best be effectuated by holding an election by secret ballot."

The argument of the court below is that under the rule contended for interminable delay would result so that the

Act would become a "merry-go-round". A conclusive answer to this argument is that the Board need merely hold an election in cases such as the present one where it is informed under oath that there has been a change in choice of a representative. The holding of an election, by secret ballot, after ordering the employer to cease any unfair practices he might have engaged in, at such time the Board is satisfied that the effect of these practices has worn off, will conclusively settle the problem. It will be unnecessary to hold a number of successive hearings upon successive representations of changes of majority, as predicted by the court below. The Board, by proceeding upon an election basis rather than upon the basis of evidence of a majority introduced in hearing, can settle the question to the satisfaction of everyone. The Board's usual rule is that certification following an election will be binding for a period of one year, consequently it is impossible for any "merry-go-round" to result.

Assuming, however, that the Board does not wish to hold an election but wishes instead to proceed on the basis of evidence submitted to it at a hearing, is it not its duty when informed by verified statement of a change in representative after a lapse of a considerable period of time at least to *investigate* such claim, in the same manner that it investigates any other petition or charge filed with it before taking formal action thereunder? Certainly the making of such an investigation, which does not entail the reopening of the record or holding of additional hearings, would not result in making a "merry-go-round" of the Act. If on preliminary investigation the union is unable to produce satisfactory evidence in support of its claim, the claim can be ignored, and no one could accuse the Board of acting in a high-handed or arbitrary fashion. If, however, the investigation reveals that the claim is valid, certainly only disruption and chaos can result from disregarding the

changed circumstances. Certainly no possible policy of the Act is effectuated by ignoring the change, but on the contrary industrial strife would be fomented. In the present case, however, as in the *Hamilton-Brown* case, the Board made absolutely no attempt to make an investigation, preliminary or otherwise, but certified an organization in the face of a sworn statement that that organization represented only a small minority of the employees. Can it then be said that the Board acted in a reasonable manner? We submit that it has not.

The Act grants to employees full freedom of choosing representatives. This freedom includes the liberty to change representatives, a liberty which is denied to the employees of the Serrick Corporation.

Petitioners merely submit that the Board should not enter an order requiring the employer to deal with the U. A. W. All other provisions of the Board's decision and order, such as requiring the employer to cease and desist from its various practices, to reinstate discriminatorily discharged employees, etc., would still be valid; it can also be ordered that the employer cease and desist from refusing to bargain with the representative of the majority, to be designated in a proper Board election. If the Board does not wish to conduct any further hearings on the question of representation or to hold an election, then it cannot order the employer to deal with the U. A. W., in view of the facts brought to its attention. It is submitted that that portion of the Board's order (Sec. 1(e), Sec. 2(g) (5)) requiring the employer to deal exclusively with the U. A. W. is unlawful and contrary to the purposes and policies of the Act.

Conclusion.

It is submitted that the decree herein of the United States Court of Appeals for the District of Columbia is in

error and should be reversed, and it is respectfully urge that the court grant the writ of certiorari petitioners see herein.

Respectfully submitted,

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
Counsel for Petitioners.

Dated February 16, 1940, 321 Tower Building, Washington, D. C.

BLANK PAGE

BLANK PAGE

FILE COPY

Office - Supreme Court, U. S.
FILED
SEP 27 1940
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

No. 16.

INTERNATIONAL ASSOCIATION OF MACHINISTS; TOOL AND DIE MAKERS LODGE NO. 35, Affiliated With the International Association of Machinists; and PRODUCTION LODGE NO. 1200, Affiliated With the International Association of Machinists,

Petitioners-Appellants,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent-Appellee.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR APPELLANTS.

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
Counsel for Appellants.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

BLANK PAGE

INDEX.

	Page
Nature of appeal and grounds for jurisdiction	1
Statute involved	2
Statement of the case	2
Issues presented	7
Summary of argument	10
Argument	14
I. The employees engaging in organizational activities were not supervisory employees so as to make their actions coercive or attributable to the employer. If these employees are not supervisory, then the Board's findings do not warrant conclusion of assistance to I. A. M.	14
A. The record does not warrant the finding that Fouts, Bolander, Dininger and Shock were supervisory employees	14
B. Acts of solicitation by these four union members not coercive and no finding in Board decision that they were direct agents of the employer	19
C. Prior employer opposition to competing union and lack of opposition to I. A. M. when it later attempted to organize cannot constitute company assistance to I. A. M.	22
D. No finding of unfair practices contributing to initial I. A. M. majority in tool room. Accordingly, contract valid	25

II. The Board acted arbitrarily in refusing, for the reasons stated in its decision, to designate the tool and die room employees as an appropriate bargaining unit 27

A. Board's power to prescribe units cannot be exercised arbitrarily 27

B. Board's reasons for refusing to designate I. A. M. craft unit are arbitrary..... 28

1. Tool and die room clearly an appropriate unit 30

2. Tool room employees have right under section 7 of act to choose own type of representative 31

3. Employer activity cannot affect unit..... 32

4. Craft unit here destroyed; representation petition a year later no remedy..... 35

5. Internal policies of union cannot affect unit.. 36

III. It is the duty of the Board to investigate verified claims of a change in choice of a representative made known to the Board prior to any previous certification. The Board erred in ignoring the claim and certifying a rival union representing only a small per cent of the employees as exclusive bargaining agent on the basis of a year-old majority status 41

A. History of change of representation and notice to Board, which was ignored..... 42

B. Second and Eighth Circuits hold contra to court below 43

C. Entirely practicable for Board to investigate claims of change. Not to do so productive of turmoil and chaos..... 46

D. Right of employees ot select representative includes right to change representatives..... 48
E. National Licorice case determinative..... 52
F. Prior to Board decision application should be made to Board, not Court..... 52

Conclusion 53

Cases Cited.

Allis-Chalmers Co., 4 N. L. R. B. 824..... 36
American Can Co., 13 N. L. R. B. 1252..... 36
Brotherhood of Railway and Steamship Clerks et al. v. Nashville, C. & St. L. Ry. Co., 94 Fed. (2d) 97..... 28
Consolidated Edison Company v. N. L. R. B., 59 Sup. Ct. 206 34
Hamilton-Brown Shoe Company v. National Labor Relations Board, 104 F. (2d) 49.....43, 44
Matter of Globe Machine & Stamping Co., 3 N. L. R. B. 294, 3rd Annual Report, pages 167-174..... 6
National Labor Relations Board v. Bradford Dyeing Corporation, ... U. S. ..., decided May 20, 1940... 51
National Labor Relations Board v. National Licorice Co., 104 Fed. (2d) 655, decided June 12, 1939..... 45
National Licorice Co. v. National Labor Relations Board, decided May 4, 1940..... 52
Todd Johnson Dry Docks Co., 10 N. L. R. B. 629..... 35

Statute Cited.

National Labor Relations Act, 49 Stat. 449, 29 U. S. C. A. 151..... 2, 3

Textbooks Cited.

3 Amer. Jurisprudence 462..... 21
4 C. J., page 656..... 21

BLANK PAGE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

No. 16.

INTERNATIONAL ASSOCIATION OF MACHINISTS; TOOL AND DIE MAKERS LODGE NO. 35, Affiliated With the International Association of Machinists; and PRODUCTION LODGE NO. 1200, Affiliated With the International Association of Machinists,

Petitioners-Appellants,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent-Appellee.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR APPELLANTS.

NATURE OF APPEAL AND GROUNDS FOR JURISDICTION.

This is an appeal from the judgment of the United States Court of Appeals for the District of Columbia entered on November 20, 1939, in the case of International Association of Machinists; Tool and Die Makers Lodge No. 35, affiliated with the International Association of Machinists;

and Production Lodge No. 1200, affiliated with the International Association of Machinists, petitioners-appellants, v. National Labor Relations Board, respondent-appellee, dismissing a petition filed by appellants herein, seeking to review and set aside an order of the National Labor Relations Board. The decision of the Court may be found in 110 Fed. (2d) 29. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended. The case involves a determination of the validity, under the National Labor Relations Act, of certain powers assumed by the Board. Decisions of the various circuit courts of appeal are in disagreement upon the question of the extent of certain Board duties. Petition for writ of certiorari was filed with this Court on February 17, 1940, by appellants herein, and an order granting the petition for writ of certiorari was entered April 1, 1940.

STATUTE INVOLVED.

The only statute involved in the present case is the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. A. 151.

STATEMENT OF THE CASE.

This case arises from the refusal of the court below to set aside an order of the National Labor Relations Board, dated July 27, 1938, pursuant to a petition requesting review of such order filed in said court by petitioners herein. The order (see R. 325-366 at 362) from which review was sought and which was affirmed below required, among other things, that the Serrick Corporation of Muncie, Indiana, cease and desist from giving effect to a collective bargaining contract dated August 6, 1937, between petitioner, Tool and Die Makers Lodge No. 35, and the company, covering the tool and die makers employed by said Serrick Corporation

at its Muncie, Indiana, plant, and requiring said Serrick Corporation to recognize the International Union, United Automobile Workers of America (hereinafter called U. A. W. or C. I. O.), Local 1590, affiliated with the C. I. O., as exclusive representative of all the production workers employed by the Serrick Corporation at its Muncie, Indiana, plant, including the highly skilled tool and die makers there employed. Under said order and decision the Board (1) illegally invalidated a mutually advantageous collective bargaining contract, (2) arbitrarily and capriciously refused to prescribe as appropriate for purposes of collective bargaining a unit consisting of all such tool and die workers employed by the said Serrick Corporation at its Muncie plant, and (3) arbitrarily refused to investigate or take action on notice given to it by petitioners prior to its decision and order that the majority, to wit, 90 per cent, of the production employees of the Serrick Corporation had become affiliated with the petitioner, Production Lodge No. 1200.

The petitioners are labor organizations affiliated with the American Federation of Labor and enrolled employees of the Serrick Corporation at its Muncie plant—skilled tool and die craft workers, into Tool and Die Makers Lodge No. 35, and unskilled production workers into Production Lodge No. 1200. These two Lodges are affiliated with the International Association of Machinists, hereinafter referred to as I. A. M.

The respondent, National Labor Relations Board, is a Governmental agency organized under an Act of Congress known as the National Labor Relations Act, 49 Stat. 449.

The Serrick Corporation is engaged in the manufacture of bolts and screws, automobile mouldings, refrigerator parts and stenotype machines. It does a large interstate business and has an annual pay roll of over a million dollars.

The Company, as other similar plants, maintains a tool room in which it employs some sixty-three tool and die makers, whose duty it is to make and repair the tools and dies used in the production department of the plant. These tool room workers are highly skilled and receive a compensation considerably in excess of that paid the production workers. Their trade, involving a long apprenticeship, has long been recognized as a well defined craft. The tool room is separated from the production department by a wire fence. (See R. 95-99.)

The present controversy arises over attempts by petitioners herein, and the U. A. W., a rival labor organization, to enroll employees in the production and tool room departments of the Serrick Corporation at Muncie, Indiana, in their respective organizations. During the early summer of 1937 the U. A. W. had been conducting a campaign of organization among production employees of the Serrick Corporation. On July 28 of that year the I. A. M. began to organize the tool room employees. After forming Tool and Die Workers Lodge No. 35, and after having enrolled a majority of the tool room employees, it entered into a closed shop collective bargaining contract with said corporation on August 6, 1937. Subsequent to the making of said contract the I. A. M. started organizing the production workers into a separate local, Production Lodge No. 1200. This organization of production workers into a separate local was done in accordance with the constitution of the I. A. M. in force for many years, which provides for separate locals for non-skilled production employees who work on machines (R. 254-258).

Upon charges being filed by the U. A. W. with the National Labor Relations Board, a complaint was issued on October 5, 1937 against the Serrick Corporation, which, among other things, alleged that the corporation had discriminatorily discharged 18 tool room employees because of

their membership in the U. A. W., although such discharges were pursuant to the closed shop contract; that it had refused to bargain with the U. A. W.; and that it had by various acts of coercion and interference attempted to discourage membership in the U. A. W. and encourage membership in the I. A. M.

Prior to the filing of this complaint the U. A. W. had filed a petition for certification under Section 9 (c) of the Act in which it claimed to represent a majority in a unit consisting of the production workers, **exclusive of tool room employees.** On September 27th this petition was amended to include tool room employees in the unit. The petition and complaint were consolidated for the purpose of hearing, and the I. A. M. intervened in the joint cases on October 12th. A lengthy hearing, lasting from October 18th through November 18th, was conducted by a Trial Examiner appointed by the Board. All parties participated in this hearing. The Trial Examiner filed his Intermediate Report on March 4, 1938 (R. 299-321). He found, among other things, that the Company had interfered with the organization of **production workers** by the U. A. W.; **that the closed shop contract covering the tool room employees with the I. A. M. was valid and binding, having been entered into at a time when the I. A. M. represented an uncoerced majority of tool room employees**; that the Company had not assisted the I. A. M. in reaching this majority; that tool room employees constituted an appropriate bargaining unit.

The U. A. W. filed exceptions to this report. On July 27, 1938, the Board handed down its decision, reversing the Trial Examiner and substantiating for the most part the exceptions filed by the U. A. W. In this decision the Board invalidated the I. A. M.'s closed shop contract. The Board concluded that the I. A. M. did not represent an uncoerced majority of employees in the tool room at the

time of the execution of the contract, having been assisted by activities of certain tool room employees members of the I. A. M., whom the Board termed "supervisory" and whose actions were accordingly held attributable to the employer.

The Board further found that the tool room employees did not constitute an appropriate unit, but that the appropriate unit consisted of all production employees of the Serrick Corporation, including those employees employed in the tool room. The Board stated, however, that the only reason it did not designate the tool room as an appropriate unit consisting of craft workers as it customarily had done in previous cases, and did not give the employees an opportunity to indicate the type of representative, craft or industrial, they desired by voting thereon according to the Board "Globe Doctrine"[1] was because the tool room workers had been influenced in their choice by acts of so-called supervisory employees, and because the I. A. M. had organized the production and tool room employees at approximately the same time, thus making the division artificial. Chairman Madden dissented from this latter reason.

The Board, without holding an election, certified the U. A. W. as the exclusive bargaining agent for all the production and tool room employees of the Serrick Corporation. This was done in spite of the fact that prior to the issuance of the decision the I. A. M. had formally notified the Board that there had been a change in the employees' choice of a representative and that the I. A. M. now represented an overwhelming majority of the production workers as well as the majority in the tool room (see R. 11-15), and in spite of the fact that an election to determine this question was requested and in fact had been expected by all parties. The Board entirely disregarded such notice of

1 Matter of Globe Machine & Stamping Co., 3 N. L. R. B. 294, 3rd Annual Report, pages 167-174.

change in affiliation and did not even attempt to investigate the matters referred to by the I. A. M. in its notice.

Petitioners sought a review of this decision in the Court below.

The decision of that Court sustained in its entirety the order of the Board. The Court further held that the Board was under no obligation or duty to investigate the claim of the I. A. M. that the majority of the employees in the production department had changed their affiliation and now desired to be represented by the I. A. M., and that its certification of the U. A. W. as exclusive bargaining agent of all employees of the Serrick Corporation was proper. Chief Justice Groner dissented from that portion of the decision affirming the order of the Board holding invalid the closed shop contract covering the tool room workers. He held that the employees who engaged in solicitation were not supervisory employees in any sense of the word, but were merely ordinary employees soliciting on behalf of the union to which they belonged.

ISSUES PRESENTED.

This case involves three issues of importance in the interpretation and administration of the National Labor Relations Act:

I. The Board's order in the present case has abrogated a contractual relationship conducive to industrial peace between the company and its tool and die workers, because of alleged assistance rendered to the International Association of Machinists through certain employees, members of the I. A. M., who had engaged in organization activities on its behalf. The Board found these employees were "supervisors," rendering their conduct coercive and attributable to the employer. Employer hositility to a C. I. O. affiliate which previously had been attempting to organize

the production employees of the Serrick Corporation, and lack of such hostility to the I. A. M. in the tool room, was an additional circumstance found by the Board to support its finding of company assistance. The first question is whether these employees were in fact supervisors, and, if not, whether the Board's findings then support the conclusion of company assistance and warrant abrogation of the tool room contract.

II. The second issue involves a determination as to whether the Board acted arbitrarily in refusing to recognize an admittedly appropriate craft unit, consisting of skilled tool and die makers, requested by the I. A. M., and assimilating this unit into a larger industrial unit requested by a C. I. O. affiliate, such refusal being based solely on the reasons (1) that the employer had interfered with organizing activity of the C. I. O., and (2) that the I. A. M. also organized unskilled machine workers in the plant into a separate production local according to the requirements of its constitution. As is obvious, the question of the extent of Board discretion in determining units is of vital importance to the I. A. M. and to the American Federation of Labor, the parent body of many other craft organizations. The existence of craft unions is left to the whim and caprice of both the employer and the Labor Board, and the Board is given powers of supervision over union affairs never intended by the framers of the act, if extraneous factors, such as employer practices having no relation to the appropriateness of a unit for bargaining purposes, and over which a union has no control, or union organizational policies as established by constitutional enactment, are to determine the existence of a unit.

III. The third issue is concerned with the power of the Board to certify one of two rival organizations as exclusive bargaining agent on the basis of a year-old representation status in disregard of the verified claim of a change

in such representation status occurring in the year's interval between the hearing and the ultimate decision. The various circuit courts of appeal are at variance as to the duty of the Board under such circumstances, where notice of the change has been brought sharply to the Board's attention. The Board has held that it can ignore such claims. If the freedom of choice guaranteed by the act is to include freedom of change, it is of the greatest importance that the Board's present policy, productive of confusion and turmoil, be altered.

SUMMARY OF ARGUMENT.

I.

The four tool-room employees who engaged in soliciting membership in the I. A. M. were not supervisors as found by the Board. They were merely what are known in the trade as "lead men" who, because of greater skill and experience, undertake the job of setting up new work when it comes into the shop. After setting up the job, they return to the regular tool-room work. They receive no higher rate of pay, have no power to hire or fire, and are merely older, more experienced employees. They were members and officers of the I. A. M. local. Further, it was expressly stipulated by all parties at the hearing that these employees were not supervisory employees. If these employees were not supervisors, then their conduct is not attributable to the employer, nor is their conduct coercive.

The Board relies principally on the conduct of these four employees to find company assistance to the I. A. M. in obtaining the necessary majority membership prerequisite to making a closed-shop contract. Their conduct being neither coercive nor attributable to the employer, no assistance was given. Further, the activities of these four employees took place subsequent to the time that a majority had been enrolled with the I. A. M., and there is no finding of any unlawful activity contributing to the initial majority.

The Board relies on employer opposition to the C. I. O. in a prior organizing campaign among production workers, and lack of active opposition to the I. A. M. when it undertook to organize the tool room. This negative conduct cannot constitute unlawful assistance. The I. A. M. is not responsible for the employer's activities, and it cannot be excluded from bona fide attempts to organize because of

the existence of prior hostility to a competing labor organization.

II.

The Board admits that tool-room employees, consisting of skilled tool and die makers, are an appropriate bargaining unit, but states that employer interference in the tool room organizing campaign renders the unit inappropriate. The Board further states that the organizing policy of the I. A. M., as prescribed in its constitution, whereby it organized skilled machine workers in one local and unskilled machine workers in another local, rendered its claim for a smaller unit artificial.

In prescribing bargaining units, the Board customarily looks to such factors as training, skill, aptitude, mutuality of interests and historical development. The Board has found in all other cases that these factors combine to make tool and die workers appropriate craft units. If this is so, can an employer's activities, over which a union has no control, in any way change these factors, or make them any less determinative of the unit question? Do not such considerations still exist after, as well as before, any alleged unfair practices? The Board, seemingly, would put the determination of the unit in the employer's hands; for the employer, by simulated preference or assistance, could render invalid any unit requested.

It is the practice and policy of the I. A. M., as prescribed in its constitution, to organize highly skilled and highly paid craft workers into separate local unions, where higher dues are paid, greater responsibilities are carried, and insurance and death benefits are greater. Unskilled production workers who work on machines are organized into separate Production Locals. It is the usual practice to organize first the craft and then the production workers, and this was done in the present case. The Board's determination that the I. A. M.'s organizing poli-

cies make its claim for a craft unit artificial is arbitrary and constitutes an outrageous interference with the internal affairs of labor organizations. There is no reason why such policy should make a craft unit any the less appropriate.

Section 7 of the Act gives employees the right to select a representative, or type of representative, of their own choosing. In accordance with this mandate, the Board has laid down its so-called Globe doctrine, whereby, in all cases where conflicting claims are made as to two possibly appropriate units, it will hold an election to permit the employees themselves to decide which type of unit they prefer. The Board has refused to permit the skilled tool room employees to indicate whether they want a craft or industrial labor organization to represent them. If the Board feels that employer practices might have affected the choice, it should hold an election, as is its practice in other similar cases, at such time as the effect of the practices have abated or worn off. To this end, the Board can issue appropriate orders, require the posting of notices, and the like. Instead, the Board has destroyed the unit by prescribing the C. I. O. as the exclusive representative in the larger, all-inclusive unit, pursuant to which an exclusive contract was entered into by the C. I. O. Thus, for all practical purposes, the I. A. M. is effectively precluded from any chance of representing the tool room employees. The C. I. O. certification stands for a year, and after an exclusive contract has been entered into it is extremely difficult, as a practical matter and in view of the Board's decisions, thereafter to obtain a craft unit determination and win an election therein.

III.

Subsequent to the hearing, but prior to the Board's decision, which was issued almost a year later, the majority of

the employees in the production department of the company switched their affiliation from the C. I. O. to the A. F. L. The Board was notified of this change prior to its decision, but ignored such notice and ordered the employer to deal with the C. I. O. as exclusive bargaining agent for all production employees. By so doing the Board has disregarded the right of employees to change their representative, which is a concomitant of their right to choose a representative. Almost a year elapsed between the hearing and the decision, and the Board cannot require that the holding of a hearing shall freeze the representation status as it existed at the time of the hearing, regardless of how long it may take to decide the case, thereby depriving employees of the right to change their representative.

There is no finding nor charge that the change in representation took place as the result of the employer's unfair practices, and any presumption that it might have is rebutted (1) by the fact that a long period of time had elapsed between the hearing and the time when the change took place, (2) by the verified contention of the A. F. L. that it had an unassisted, bona fide majority, and (3) by the fact that the company, even though notified by the A. F. L. of its claim, nevertheless favored the C. I. O. by entering into an exclusive contract with the C. I. O. prior to the Board's decision.

If the Board would prevent industrial turmoil and chaos, it should at least investigate claims such as the present one, made under oath. If there is any merit to the claim, it could then hold an election which will dispose of any controversy as to representation for at least one year, for a Board certification is good for that time. Under such circumstances, the act cannot be made a "merry-go-round" by the filing of successive claims. In the present case the Board made no attempt even to investigate the verified claim, but instead ordered the employer to deal exclusively with a rival union representing only a small minority.

ARGUMENT.

I.

THE EMPLOYEES ENGAGING IN ORGANIZATIONAL ACTIVITIES WERE NOT SUPERVISORY EMPLOYEES SO AS TO MAKE THEIR ACTIONS COERCIVE OR ATTRIBUTABLE TO THE EMPLOYER. IF THESE EMPLOYEES ARE NOT SUPERVISORY, THEN THE BOARD'S FINDINGS DO NOT WARRANT CONCLUSION OF ASSISTANCE TO I. A. M.

The Board's order invalidated a collective bargaining contract, covering the tool room employees, entered into between the Serrick Corporation and Tool & Die Makers Lodge No. 35. The contract contained clauses advantageous to both parties, and its terms were conducive to industrial peace. Among other things, the contract stated that "during the life of this agreement no strike shall be caused or sanctioned by the union and no lockout shall be entered upon by the employer until every peaceful means of settlement of the difficulties have been tried" (R. 7-10). The Board's reason for nullifying this contract, as stated in its decision (R. 340), was that the I. A. M. had been assisted in obtaining the requisite majority "by a corps of supervisory employees."

A. The Record Does Not Warrant the Finding That Fouts, Bolander, Dininger and Shock Were Supervisory Employees.

The "corps" of so-called supervisory employees to which the Board refers in its decision as soliciting membership in the I. A. M. consisted of four employees—Fouts, Dininger, Bolander and Shock (R. 340). Two other tool room employees, Byroad and Baker, were also alleged to

have engaged in electioneering activities, but there is no attempt to classify these two as "supervisory employees" (R. 341). These four men were members and officers of Lodge 35, all being eligible to membership under the constitution of the union.

The Board's order, nullifying the contract, accordingly must rest on the validity of the finding that these four employees were supervisory—first, to render their conduct, which consisted only of ordinary solicitation, coercive, and, second, to attribute such conduct to the employer.

What does the record show as to the status of these four? We find, in the first place, that these employees were not foremen, let alone supervisors entrusted with executive or directorial functions. They were in no real sense ever minor supervisory employees, such as straw bosses. None had been accorded any special powers of direction or control by the employer, or had any power to hire or fire. They were merely what is known in the tool and die workers' trade as "lead men." A lead man is a tool and die maker, who, by reason of long experience, or by previous experience on a particular job, has become skilled in the method of handling new jobs that come into the shop. He determines the best method of doing the job, which tools should be used, how the job is to be set up. A lead man is not looked up to as an actual "boss," even though at times they may be so termed when directing the set-up of work. So, for that matter, would an apprentice or helper call an ordinary machinist his "boss." The lead men, after having set up the work, engage in tool and die making with the other tool and die workers, unless it is a very large shop, in which case they are sometimes engaged in set-up or "lead" work a greater part of the day (R. 33, 58, 116).

The Board states that Fouts, alleged to be most active on behalf of the I. A. M., was "in charge of the roll department in the tool room and worked alongside of certain

machinists whom he directed." As explained, his duties consisted of setting up the work and in making "rolls" for the rolling department, on which latter job he was the **sole** worker (R. 138). He worked on the first shift, where either McCoy or Dominick, foreman and assistant foreman, respectively, were present and in sole and complete charge all of the time.[2]

Although it is stated that Fouts made recommendations, this was due to his seniority standing rather than to any official position he held; such recommendations may be and are made by any employee. Fouts describes himself as an ordinary tool maker who makes all of the rolls for the rolling department (R. 138). The Board's witness described Fouts as follows:

> "Walter Fouts was more or less an assistant foreman, in that he had certain machinists under—in his charge, who manufactured rolls for the rolling and molding departments, and he was also authorized to sign requisitions, and he also worked along with men who worked for him."

The foregoing evidently is what the Board relies upon in finding Fouts a supervisor. It should be noted that the same Board witness, in describing solicitation by Fouts, says that, while he was being solicited by Fouts for membership, **his foreman** (McCoy) was sixty feet away (R. 22).

Shock describes himself as an ordinary tool maker and tool repairer (R. 120). He is described by the Board's witness as "sort of assistant foreman" "about half of the time" (R. 45). Another Board witness, when asked if Shock was an assistant foreman, stated, "Well, I don't know whether he was. He kind of had charge of the roll department there" (R. 54). Other Board witnesses de-

---

2 There is no finding that McCoy or Dominick engaged in any electioneering activities, though they might well have been expected to, had the I. A. M. organizational drive been company inspired and directed as charged by the Board.

scribe Shock as "a tool and die maker" (R. 57) and "another employee in the tool room" (R. 90).

As before stated, both Fouts and Shock worked on the first shift, where McCoy and his assistant, Dominick, were in exclusive charge all the time. To hold that the foregoing testimony, which is the only testimony in the record on which the Board can rely, is sufficient to constitute these men members of the executive or supervisory force of the plant, and thus agents of the employer, is preposterous. The best indication that these employees were merely ordinary employees is seen from the incidental reference to their status in the testimony of Board witnesses. One Board witness speaks of much agitation and antagonizing "by employees in the tool room," and by such employees he says he refers to Byroad, Shock and Fouts (R. 47). Another Board witness, when asked what were the duties of Byroad, Fouts and Baker, s tes "making dies" (R. 50).

Further, the Board does not claim that Bolander and Dininger, except for one instance,[3] did any actual soliciting, but merely stated that they stood idly by while soliciting went on, although the record is clear that both sides were engaged in organizing activities during working hours.

Bolander and Dininger were not "foremen." It is very misleading for the Board to call them "foremen" on the third and second shifts, respectively. The working hours of the plant were divided into three shifts; the first, the normal and principal shift, in which some fifty of the sixty-three tool room employees worked; the second, an evening shift in which eight or nine of the employees worked, and the third, an early morning shift in which three or four worked (R. 115). McCoy and Dominick had complete

[3] Dininger is reported to have said to a tool room employee that he would get a better rating if he joined the A. F. L. What was meant by this statement is not disclosed. It should be noted that this occurrence took place on August 10th, after the closed-shop contract had been agreed to, and long after a majority had been obtained. This is the only instance of any solicitation engaged in by Dininger.

charge of these shifts, one being in charge when the other was not there (R. 102, 110). They would appear at various times on all three shifts, whenever possible. McCoy was present most of the time on the second shift, as well as the first (R. 116). On the last two shifts there were not enough tool room men working to require another foreman, or any foreman at all on the last shift. Although Dininger and Bolander, as older, more experienced employees, were lead men on the latter two shifts and would refer men to new jobs if necessary, neither Dininger nor Bolander had any higher classification, received any higher rate of pay, nor had any greater power than other employees. The only actual description of the duties of Dininger and Bolander in the record is made by McCoy, the foreman. He stated that these men looked after things at night; that in a way they were in charge of the shift. He said, "I didn't try to line up every man with their job. I just told him—or gave him a list of the work I wanted done, then he distributed it" (R. 114-115). Bolander describes himself as an ordinary tool maker (R. 137).

In addition to the foregoing considerations, there are uncontested exhibits and a stipulation entered into by all the parties which conclusively indicates that these employees were not "supervisory employees." Respondent's Exhibits Nos. 6 and 7 (R. 177-178) list the working employees in the tool room and designate the supervisory employees. The only persons named as supervisory employees are McCoy, foreman, and Dominick, assistant foreman. These exhibits stand unrefuted.

Of greater and conclusive significance, however, is the stipulation entered into by the unions, the Labor Board and the employer, listing the ordinary working employees in the tool room (R. 169). This stipulation **expressly excludes "foremen, office employees and other supervisory employees."** The names of all four of the employees whom the Board now claims to be "supervisory employees" are

expressly **included** in the list. The names of McCoy and Dominick are omitted. The Board's attorney signed the stipulation and the Trial Examiner found the stipulation binding. It was not until the Board's decision that it was challenged. Chief Justice Groner emphasizes the significance and binding effect of this stipulation in his dissent (R. 401).

Because of this stipulation no attempt was made by any of the parties to prove that these four either were or were not in any supervisory capacity. Apparently, the conclusion of the Board that they were supervisors came as an afterthought, based on statements made by Board witnesses incidental to other testimony. For instance, the Board seized upon a remark made by one of the C. I. O. members, discharged because of the contract (and seeking back pay because of alleged invalidity of such contract), that Fouts "was his boss." This remark is nothing but a self-serving declaration and is, moreover, a pure conclusion entitled to no weight whatsoever as evidence.

B. Acts of Solicitation by These Four Union Members Not Coercive and No Finding in Board Decision That They Were Direct Agents of the Employer.

The Board claims that the solicitation by Fouts and others was done "pursuant to the known desires of the employer," and, therefore, states that these solicitations must be attributed to the employer.

There is no finding that any solicitation was done pursuant to any order or direction of the employer. The Board arrives at the finding necessary to attribute conduct of these employees to the employer—to wit, the finding that the employer had made known his desires in the matter—by deducing this from the very act of solicitation itself.

It is important to bear in mind that these four employees

were members and officers of Lodge No. 35. When officers and members of a union solicit membership for that union, at least the prima facie inference would seem to be that these activities are carried on on behalf of the union, not on behalf of the employer. However, the Board places the inference the other way, and without any supporting evidence other than the very fact of solicitation finds that the employer, and not the I. A. M. directed the solicitation to be done.

If these four employees were not exercising supervisory powers, the Board's entire case must collapse, for the Board relies solely on the activities of these four employees and on their status as supervisors, both to render their conduct coercive and to attribute it to the employer. The findings in the Board's decision relative to the activities of these four employees are that they engaged only in ordinary electioneering or organizational work, activity in which any union member, interested in the furtherance of his organization, might be expected to engage. There is no finding of any threat of discrimination or similar conduct on the part of these four or anyone else, except for two references too trivial upon which to base a finding of assistance.[4] The Board finds nothing but ordinary solicitation and persuasion, and it is only the alleged status of these four as supervisors that renders this conduct coercive.

The court below, but not the Board, found that, regardless of whether these employees were supervisors, their relationship with the company was such as to make them its direct agents. The Court delves extensively into the record in an effort to support this conclusion, and, finding

---

4 Shimer, night superintendent, was alleged to have stated to a tool room employee "about July 26th" that "Mr. Serrick would recognize an A. F. L. but he would not recognize a C. I. O. union." On August 6, the date the tool room contract was agreed upon, Lewis, the personnel director, asked two tool room employees why they did not join the A. F. L. and said to "straighten things out and have one organization in here."

them all old and trusted employees—some of them personal friends of the executive officers—and that one of them, Fouts, had been active in organizing the Acme Welfare Association, concludes that they are "tools" of the employer.

None of these lengthy findings on which the Court below bases its conclusion of direct agency finds any support or counterpart in the findings of the Board except, possibly, the finding of Fouts' activities on behalf of the Acme Welfare Association, which certainly is not sufficient in itself to warrant the conclusion of an agency. It is submitted that it is for the Board, and not the reviewing court, to determine the existence of facts relevant to the case. The act provides that the findings of fact made by the Board shall be conclusive if supported by evidence. Further, it is the rule that an appellate court will not make findings not made by the trial court, even though the evidence clearly warrants them; nor will it add to a special finding of fact, unless that which is added results as a necessary conclusion from the facts found. See 3 Amer. Jurisprudence 462; 4 C. J., page 656, and cases cited thereunder. The Board is the tryer of the facts. It is to be presumed that any findings which the Board fails to make, even though supported by statements in the evidence, were not made either because such testimony was contradicted by other testimony in the record or because it was insubstantial, incredible, or otherwise unsatisfactory.

If we confine ourselves to the findings in the decision of the Board, it is impossible to draw any conclusion of agency. The inception of the movement to organize tool room employees is described in the Board's decision as an independent movement, instituted by Fouts, Byroad and Baker, and having no connection with the employer, unless these employees are found to be employed in a supervisory capacity. The trial Examiner who heard the evidence

found that the impetus to organization came from the unwillingness of the skilled tool-room employees to go along with the U. A. W. (C. I. O.), an industrial union (R. 307-309). True, there is found a history of opposition to the C. I. O. and a dislike by Fouts and others for that organization. Such a finding, however, does not warrant a conclusion that the four tool-room employees most active on behalf of the I. A. M. were mere minions of the employer, or that their efforts to organize an A. F. of L. craft local were by the employer's direction.

C. Prior Employer Opposition to Competing Union and Lack of Opposition to I. A. M. When It Later Attempted to Organize Cannot Constitute Company Assistance to I. A. M.

The Board, as well as the court below, as pointed out in the dissent of Chief Justice Groner, places great reliance for its finding of company assistance to the I. A. M. on its finding of active company opposition to the C. I. O. at a time when the I. A. M. was not in the plant, and a lack of active opposition to the I. A. M. when it, in turn, attempted to organize, first, the tool room and then the production employees. The Board's decision finds that the C. I. O. began its organizational campaign during the month of June, 1937. Its activities were centered in the production department. In the succeeding months it met with opposition from the company, evidenced principally by various remarks of various executives of the company expressing dislike for the C. I. O., and a company union was promoted in an effort to defeat organizing activities. On the evening of July 28, 1937, the I. A. M., for the first time, made its appearance at the plant. C. F. McDonald, an International representative of the I. A. M., after being approached by several of the tool room employees on that same date, called a meeting for that night, at which meet-

ing thirty-four of the sixty-three of the tool room employees signed application cards. McDonald continued organizational activities in the tool room for the next nine days, using employees who had signed membership cards to assist him. Among these were the four so-called supervisory employees. On the 6th of August a contract was agreed upon between the machinists and the company, but it was not signed until the 11th, due to the absence of the president. The I. A. M. met with no active opposition in its organizational attempts in the tool room, but neither did it obtain any company assistance, unless Fouts, Dinger, Bolander and Shock can be considered supervisory employees.

The Board relies on the finding of opposition to the C. I. O. and lack of company opposition to the A. F. of L. to establish the fact of company assistance to the A. F. of L. The Board thereby holds in effect that, in a case where two rival labor organizations are competing in a plant, any attempt on the part of the employer to interfere with the organizational activities of one organization operates as a matter of law to encourage and assist the other organizations. Apparently the Board would so hold, even though one organization was not present in the plant or actively competing with the complaining organization at the time of the interfering activities and did not appear for months subsequent to that time, and even though the employer had no knowledge and did not anticipate that that organization would also attempt organization in the plant. Such employer activity, the Board states, operates to bar the union not discriminated against from organizing in that plant for an indefinitely extended period.

Such a doctrine is not only manifestly unfair and arbitrary; it is contrary to specific provisions of the National Labor Relations Act guaranteeing to employees the right to engage in concerted activities for the purpose of collective bargaining, and to form, join or assist labor organiza-

tions. Are such organizations to be deprived of their right to organize because of the previous existence of an employer's unfair activities over which the organization has no control and which were in no way prompted or supported by it?

The Board's decision does not hold that the I. A. M. was brought into the plant at the instance of any supervisory official of the company other than the four employees we have been discussing. **On the contrary, it is clear from the record and the decision that the impetus to organization came from the employees themselves.** (See Decision, R. 339.) These skilled tool room employees, as the trial examiner has found, preferring the American Federation of Labor craft union to a C. I. O. industrial union, themselves sought out an I. A. M. organizer and secured representation through the I. A. M. The Board has entirely overlooked their wishes and rights in this matter. Because the employer did not immediately assume the most hostile attitude possible toward this attempt to organize a small group of its most skilled employees, the Board has found company assistance and has vitiated the contract entered into by the machinists as the representative of the skilled tool room employees of the employer.

Further, the Board has failed to give consideration to the fact that these four alleged supervisory employees were members and officers of the I. A. M. If the activities which took place in connection with the attempted organization in this plant by two rival labor organizations are to be outlawed as unfair practices, then in nine out of ten cases where rival national organizations are contending there will likewise be found countless incidents of the same general type here proscribed, which can be used as a basis for upsetting the stable relations resulting from entering into collective bargaining contracts. It is inevitable that all employees, eligible to and members in labor

unions, will speak on behalf of their organizations. And it is their right so to do.

Relying on the Board's own findings—and it is on these findings alone that the case must be decided—it is obvious that no conduct attributable to the employer operated to assist the I. A. M. in obtaining its majority, unless we consider prior opposition to C. I. O. organizing activity in the **production** department and a lack of active opposition to subsequent American Federation of Labor attempts to organize in the **separate, tool room department** to constitute such assistance, and unless we find that Fouts, Bolander, Dininger and Shock were supervisory employees so as to make their mere solicitation coercive and attributable to the employer. The Board's whole case rests on these conclusions, which, we submit, are incorrect.

D. No Finding of Unfair Practices Contributing to Initial I. A. M. Majority in Tool Room. Accordingly, Contract Valid.

An additional and important reason for holding the Board's invalidation of the tool room contract unlawful is as follows: There is no finding by the Board that there were any unfair practices of any kind on the part of the employer assisting the I. A. M. prior to the time that the I. A. M. had obtained a majority membership on July 28, 1937. It follows that any course of activities on the part of the employer subsequent to the time of obtaining a lawful majority would, first, be irrelevant, and, second, would be permissible, provided that such activities did not operate to enable the I. A. M. to retain that majority. It is not the fact that any so-called unfair practices operated to enable the I. A. M. to retain its majority; there is no evidence to give rise to any such inference; **and, most important, the Board made no such finding.**

This argument does not, as the court below seems to feel (see Sec. 5 of the Opinion), ask the Court to confine its

consideration of the evidence to occurrences in the tool room during the nine-day period between July 28th, when a majority of eligible employees had signed application cards in the I. A. M., and August 6th, when the contract was agreed upon by the company, although not signed.

We merely state that what occurred subsequent to the 28th is irrelevant, unless the Board wishes to make a finding from such occurrences that the majority obtained on the 28th was maintained only because of unfair practices. This finding the Board did not make.

Although the Board found as a fact that on the 28th of July a majority of the tool room employees had signed application cards in the I. A. M., both it and the court below seemed to disregard this very important fact.

It is submitted that it is very necessary to ascertain whether any assistance had been proffered to the I. A. M. prior to the 28th to enable it to obtain this majority. The Board's decision is barren of any finding warranting a conclusion that the July 28th majority had been obtained through active assistance and connivance of the Serrick Company. The Board is only permitted to attack a majority status if it finds that such status had been reached through assistance of the employer. All the Board's findings in respect to "assistance" indicate that the "assistance," whatever it may have been, occurred after, and not before, the majority had been obtained. Section 8 (3) of the National Labor Relations Act specifically preserves a closed-shop contract made by a majority which has not been assisted by an unfair labor practice. It is submitted that the thirty-four tool room employees who became members of the I. A. M. the evening of July 28th constitute such majority, and the contract made by them is an entirely valid one.

II.

THE BOARD ACTED ARBITRARILY IN REFUSING, FOR THE REASONS STATED IN ITS DECISION, TO DESIGNATE THE TOOL AND DIE ROOM EMPLOYEES AS AN APPROPRIATE BARGAINING UNIT.

A. Board's Power to Prescribe Units Cannot Be Exercised Arbitrarily.

The National Labor Relations Act gives the Board the power to prescribe bargaining units. In the exercise of this function the Board is able to exert considerable control over the destinies of craft labor organizations. Craft units usually consist of small, skilled groups of employees. Such groups can, under the act, be assimilated into larger units, such as plant-wide units, by administrative fiat, and their existence as bargaining crafts thereby destroyed. It is because of the discretion lodged in the Board, concerning unit determinations, and the threatened and actual destruction of craft organizations through refusal to recognize craft lines, that the American Federation of Labor and its craft affiliates have suffered most severely under the act. On many occasions the Board has seized upon some slight circumstance as reason for designating a larger bargaining unit contended for by a rival organization to the exclusion of a smaller craft unit. Because of the disastrous consequences of an improvident or arbitrary exercise of the discretion that has been lodged in the Board with respect to unit determinations, it is of the utmost importance that this discretion be exercised with the greatest caution and restraint, and with diligent respect for the existence of historic craft lines.

The Railway Labor Act confers similar discretionary powers to prescribe units on the Railway Mediation Board.

The Circuit Court of Appeals for the Sixth Circuit, in **Brotherhood of Railway and Steamship Clerks et al. v. Nashville, C. & St. L. Ry. Co.**, 94 Fed. (2d) 97, in discussing the limits of this power in respect to craft determinations, states as follows:

> "As indicated in the companion case, supra, it is apparent from a careful reading of the Railway Labor Act that the intent of the Congress was to preserve existing crafts and classes of employees as units for collective bargaining with employers. This constituted in part at least the rationale of our decision."
>
> • • • • • • •
>
> "The terms 'craft' or 'class' are not defined. It is fair inference that the Congress intended that collective bargaining groups already constituted and functioning were to be recognized, and it is likewise fair inference that the terms were left sufficiently elastic to meet not only changing conditions but also varying existing conditions among the employees of carriers differing greatly in size, number of employees, intensiveness of their organization, and differences in its origin, scope, and development."
>
> • • • • • • •
>
> "It may be deduced from this that there is no contention that the Board may of its own motion establish crafts or classes by arbitrary rulings as to grouping, or that the Board is authorized by the statute to ignore historical development, the wishes of the employees, or other factors material to a determination of the existence and scope of existing craft or class groups."

B. **Board's Reasons for Refusing to Designate I. A. M. Craft Unit Are Arbitrary.**

The present case is a classical example of the Board's proclivity to seize upon some irrelevant circumstance as

reason for favoring the industrial type of unit sought by a rival labor organization. The Board has here formulated two theories under which it has refused to recognize the craft unit requested by the I. A. M. Neither of these theories have any possible relevance to the appropriateness of the unit or the purposes of the Act.

The Board states that in the present case the tool and die makers ordinarily constitute an appropriate unit for bargaining purposes, but says that it cannot designate such unit in the present case for two reasons, and two reasons only. These reasons are: (1) The employer had engaged in unfair practices which might affect the choice of the employees in the unit, and (2) the I. A. M. had attempted to organize the production workers who work on machines into a separate production local at approximately the same time it had organized the tool room employees, thus making the two units artificial.

It is submitted that these reasons are arbitrary in the extreme. The Board's action in the present case can have an origin only in a desire to favor industrial units, or a desire to inflict punitive measures upon an employer, or a desire to supervise organizing policies of bona fide labor organizations, none of which functions have been conferred upon it by Congress.

It is important to note that the above two stated reasons are the sole reasons for the Board's refusal to designate the tool room unit. Counsel for the Board, in his brief, and the majority opinion below both wrongfully attempt to bolster the unit holding by setting forth other factors **not** relied on by the Board in its decision as affording reasons for a refusal to designate the craft unit. We quote the Board's decision in this respect:

> "**While ordinarily we have regarded as controlling the free choice of a majority of the employees in a well-defined craft** as to the form of organization they

desire, in the present case the respondent's conduct in influencing such choice precludes the application of this doctrine in the determination of the appropriate unit or units. Furthermore, for the purposes of the act, and under the circumstances of the present case, the division of the respondent's employees by the I. A. M. international into two locals for organizational purposes must be deemed artificial."

It is to be further noted that the Board clearly admits that the tool room unit is otherwise an entirely appropriate one.

1. Tool and Die Room Clearly an Appropriate Unit.

In determining whether requested units are or are not appropriate for bargaining purposes, the Board customarily considers such factors as training, skill, and aptitude of the employees in the unit, mutuality of interest, historical development, and methods of bargaining in the industry, and other factors indicating a community of interest that promise success to bargaining attempts in the proposed unit. (See Third Annual Report N. L. R. B., pages 156 through 196.) In all other cases prior to the present one, the Board had found that tool and die makers were an historical craft and constituted an appropriate bargaining unit. The Board has not found that any of the many factors of appropriateness do not exist in the present case, or that the work of the tool and die makers employed at the Serrick Corporation differs in any respect from the work of tool and die makers in other cases where it has certified a tool and die room as an appropriate unit. Can an employer's unfair labor practices or a union's organizing policies operate to make this unit any less appropriate, or to permit the Board to deny the craft employees in such unit the right to select the type of representative—craft or industrial—that they prefer? It is submitted that it cannot.

Tool and die makers compose an historic craft. For reasons of skill, for reasons of specialization of abilities, by reason of the handicraftsman's pride in his work, by reason of the distinct nature of the work performed by them, tool and die workers have banded together in American industry as a group separate and apart from other mechanical workers. Four or five years apprenticeship, plus five years additional experience, are required to make a good toolmaker. They have received higher wages, have commanded respect and freedom in every plant, are looked up to as skilled technicians, and generally enjoy an advanced position in the field of labor. Their working quarters are usually separated from the rest of the production departments of the plant, either by being enclosed in a separate room or being set off by fences and gates, as in the present case. The sixty-three tool and die makers employed by the Serrick Corporation were the highest skilled employees in the plant and received a rate of pay higher than the ordinary production workers. The work consisted solely of making and repairing tools and dies. None of the products manufactured or sold by the Serrick Corporation were made, or even worked upon, in the tool room. The only persons from the production department allowed in the tool room were foremen or set-up men who would bring some tool to be repaired (R. 95-99).

2. Tool Room Employees Have Right Under Section 7 of Act to Choose Own Type of Representative.

Section 7 of the National Labor Relations Act specifically provides that employees shall have the right to form or join labor organizations of their own choosing, and to select their own bargaining representative or type of representative. In line with this mandate, the Board has established a policy of ascertaining, by vote or otherwise, the desire of employees in two conflicting, but possibly

appropriate, units. Whenever two rival labor organizations attempt to enroll employees of a particular plant into their respective ranks and one labor organization is proceeding on a craft basis, the Board, in accordance with this policy of looking to the actual desires of the employees as the greatest single controlling factor in designating a bargaining unit, will hold an election to let the workers indicate their wishes in the matter. This procedure is an application of what is known as the Globe Doctrine (page 168, Third Annual Report, N. L. R. B.). In the present case the Board has denied the employees this right, contrary to Section 7 of the Act and contrary to its own Globe Doctrine. Instead, it has ordered the tool room employees assimilated into the larger industrial unit.

3. Employer Activity Cannot Affect Unit.

Let us examine the validity of the reasons assigned by the Board for its action and the consequences of upholding such action. First, as to the reason of the employer's unfair practices, we assume, for the purpose of this argument, that the employer has assisted the I. A. M. to obtain membership through solicitation by supervisory employees. Is there any reason why this action should operate to destroy the appropriate unit? It may be that the employees cannot express their free choice and desire as to which type of representative—craft or industrial—they desire until after the employer has been ordered to cease and desist his practices and until after the effects of his activities have worn off. This the Board can easily and quickly accomplish, as it has on other occasions, by the posting of notices, making of appropriate orders and the like. But should acts of the employer, over which neither the union nor the employees in the unit have any control, overcome all the circumstances and factors of appropriateness otherwise existing? Surely, none of these circumstances

are in the least changed or altered by the employer's activities. If, previous to the unfair practices, there existed a mutuality of interest by reason of skill, by reason of apprenticeship requirements, by reason of higher wages, by reason of physical factors, these circumstances are still in existence after the unfair practices. Why should any act of coercion or discrimination on the part of the **employer** among employees in that unit operate to destroy it? The only proper concern of the Board in such cases is to see to it that the choice of the employees is exercised under fair conditions. In the present case the Board has gone to the extreme extent of penalizing not only the employer, but the union and the employees of the company who belong to that union. **It has permitted the employer's acts to destroy the unit,** and as a punitive measure turned over representation to a rival organization whom the employees do not want.

This is all the more inexplicable when it is considered that **in all other cases** where unfair practices were found to have destroyed free choice, as in cases where illegal contracts have been entered into, or as in a case where an election has been interfered with by an employer's activities, the Board has merely ordered the employer to cease such practices, and then has directed an election to be held in the future when the effects of the unfair activities shall have diminished. (See Third Annual Report, page 143, Sec. c.)[5] In such cases it does not change the unit in

[5] The Board's brief asserts that in complaint cases involving a refusal to bargain, as well as charges of interference and coercion, it does not postpone the election to permit the effect of the unfair practices to wear off. Obviously, in such a case an election is not necessary, even to ascertain whether a majority exists, yet alone to ascertain the choice of a unit. Further, there is no unit determination of any kind required, for a refusal to bargain assumes that it is in some appropriate unit. The case is different where a rival organization is claiming a smaller unit and the Board is confronted with the problem of determining which of two units is appropriate. It is only when this conflict exists that the necessity for holding an election, not necessarily to determine the majority, but to determine a choice of unit, arises. It is correct to state that in all cases where any necessity for an election arose, either to ascertain a majority

which the contract was made or in which an election was held. Why is not that procedure followed in the present case? There is no difference in applicable principles. In both cases the Board is interested only in finding out what the employees want. And yet in the present case the Board has suddenly become interested only **in what it thinks the employer does not want**, and disregards both employees and the union in seeing to it that the employer does not get it. It is difficult to imagine a clearer case of punitive jurisdiction, condemned in the case of **Consolidated Edison Company v. N. L. R. B.**, 59 Sup. Ct. 206. In that case it is further stated that nothing that **the employer** may do can deprive the employees of the right to choose their own representative for collective bargaining purposes.

Further, it is very important to note that the rule established by the Board in the present case would afford the employer an easy method for destroying craft units by simulated assistance or preference. He need merely render some assistance to a union which is attempting to organize a group of his employees. The assistance might be unasked for and unwanted. The Board could then state that, because the employer has affected the choice of his employees, the unit can no longer be considered appropriate. The holding of the Board in the present case is no more preposterous than this.

We do not ask that the Board give effect to a unit whose ostensible choice by the employees in it is the result of their employer's unfair practices, but we do insist that opportunity for a free exercise of that choice be granted if the unit in question is otherwise admittedly appropriate, as in the present case. The I. A. M. is not, nor has it been found to be, responsible for any activities

---

or to determine a unit, and there have been unfair practices which might affect a choice, the Board held an election after it had ascertained that the effect of the unfair practices had abated. In the present case the Board uses the possible effect of an unfair practice as a reason for not prescribing the unit at all.

the employer may have indulged in in this case. Employees in the tool room are entitled to an opportunity to select the type of representative, craft or industrial, that they prefer, and the I. A. M. is entitled to be the craft representative if chosen by these employees.

4. Craft Unit Here Destroyed; Representation Petition a Year Later No Remedy.

It seems clear, then, that under the Board's reasoning the mere fact of an employer's unlawful activities over which a union has no control can operate to destroy a craft unit and to deprive a craft union of its bargaining status. The Board argues that the craft unit is not destroyed, nor the union prevented from bargaining, because the union might ask for an election at a later date under section 9 of the act. The Board states that it has expressly reserved that right in the present case by attaching a proviso to its order nullifying the tool room contract, providing that nothing in such order shall preclude the company from hereafter making an agreement with the I. A. M. or any other labor organization, if such representative is the majority representative in an appropriate unit. The proviso is, of course, merely an expression of the law as it exists and is further meaningless because it fails to indicate what unit is appropriate. Presumably, the plant-wide unit, which the Board has just designated, would be the only appropriate unit. More important, the argument that the I. A. M. may still resort to a petition under section 9 of the act completely overlooks the following important considerations:

1. The Board's designation of a unit and certification of a representative therein is binding for a period of at least one year. (See **Todd Johnson Dry Docks Co.**, 10 N. L. R. B. 629.)

2. A closed-shop contract may be entered into embracing a larger unit, thus foreclosing or seriously hampering further organizational activities by a rival union in the smaller unit. Apart from any considerations of a closed-shop contract, it is very difficult, as a practical matter, to maintain an organization in a group that has been refused recognition as a bargaining unit and that is being exclusively bargained for by a rival organization on a plant-wide basis. For all practical purposes, certification for a period of one year precludes for a period of many years any hope of winning an election even if the smaller unit would be designated. The damage was accomplished by the original arbitrary refusal to designate the admittedly appropriate unit.

3. Under the existing decisions of the present Board it will be impossible to obtain a change of decision as to the unit question. It is the invariable holding of Board Member Smith that, in the absence of a prior history of craft bargaining in the plant, an industrial or plant-wide unit constitutes the only appropriate unit. See dissent in matter of **Allis-Chalmers Co.**, 4 N. L. R. B. 824.) It is the invariable holding of Board Member Leiserson that a history of a previous contractual relationship on any given unit basis is conclusively determinative of the unit question. (See decision in matter of **American Can Co.**, 13 N. L. R. B. 1252.)

In view of these considerations, any suggestion that there is available the remedy of a petition at a date not less than a year following the decision is facetious and insincere in the extreme.

5. Internal Policies of Union Cannot Affect Unit.

The second reason advanced by the Board for refusing to designate the unit asked for by the petitioners is that the I. A. M. had chosen to organize both the tool room and

the production departments at approximately the same time, thus making artificial the unit contended for, and estopping themselves from claiming separate units. It is to be noted that Chairman Madden refused to accept this reasoning and dissented from that portion of the opinion.

In the first place, it is not a fact that the I. A. M. attempted to organize both the tool room employees and the production employees at approximately the same time. Organization in the tool room had been completed and the closed-shop contract entered into by August 6th. It was not until August 10th, by the Board's own findings, that the I. A. M. attempted to organize in the production department, and it was not until October 15th that the production local obtained a charter.

The Board argues that this division was artificial. Why it was artificial is not stated. For many years the I. A. M. has organized production and skilled workers into separate, distinct lodges whenever the size of the plant or community warranted it. This practice is one prescribed in its constitution; it is one which has customarily followed. See Article A, Section 2 (R. 254-255); Article A, Section 7 c (R. 256), and Section 6 of Article B (R. 257), which states that in localities where there are sufficient numbers of machinists, die sinkers, tool and die makers, specialists, production workers or machine helpers employed in any one or more divisions of the trade, **separate local lodges** may be organized for the benefit of these employees in their respective divisions. In practice, the provisions of section 6 have been construed to require separate local lodges wherever possible. This classification is not an arbitrary act on the part of the I. A. M. Many unions make such classifications, and generally they are accompanied by a difference in dues, duties and obligations. An unskilled worker in a machine shop, earning a moderate sum of money, may pay 70 cents a month as dues for membership in the production workers' union, whereas the highly

skilled and higher paid craft worker may pay $2.00 per month as dues for membership in his local union. The diversity of problems affecting the workers in the highly skilled crafts and the workers in the unskilled production end of the industry frequently brings about demands on the part of these workers for separate charters and for separate locals from the International Unions. It is only natural that the different interests of skilled and unskilled machine workers, and the different nature of the work performed by them, should result in their forming separate locals.

It should also be noted that tool and die makers are part of a different labor market from production workers. Many commercial tool and die shops handle contract work from plants which would otherwise employ their own tool and die makers to manufacture the tools, dies, jigs and fixtures necessary to plant production. Tool and die makers follow the tool and die-making trade, and it makes little or no difference if the tool room in which they work is run in connection with an auto parts manufacturing plant or a plant in the electrical industry, or is operated independently on a contract basis turning out work for many plants in the community.

There are other considerations which we could dwell upon, but the foregoing will suffice to demonstrate the practical necessities which require this division.

However, regardless of its reasons, it is submitted that what the I. A. M. does in respect to its internal affairs, is entirely its own business. The National Labor Relations Act was not passed for the purpose of giving the Board a carte blanche to inquire into the internal workings of labor organizations and to probe their organizational policies with the end of agreeing or disagreeing therewith. Organized labor is extremely apprehensive over this policy of the Board, and it is of vital importance that the Court protect labor organizations from this outrageous inter-

ference with their internal affairs. When the National Labor Relations Act was passed organized labor was assured that there would be no such interference. On November 13, 1935, Senator Wagner wrote a letter, which has since become a public document, to Daniel J. Tobin, general president of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, in which he gave this assurance to organized labor. We quote from this letter:

> "As author of the legislation I can say very definitely that it was never intended to permit the Labor Board to interfere in the internal affairs of labor organizations, and I do not believe there are any words in the Act conferring such power."

The court below and the Board, in its brief, argue that there existed a certain integration between the work of the tool and die workers and the rest of the production work in the plant, and this consideration freed the unit finding from any taint of arbitrariness. Obviously, there is an integration in every industrial plant between the work of any craft group, such as tool and die makers, pattern makers, buffers and polishers, etc., and the functions carried on by the rest of the workers in the plant. If that were the sole criterion the craft units could never be certified. However, the Board, in its decision, did not rely on this factor. On the contrary, it expressly stated that, except for the two factors of the employer's unfair practices, and the I. A. M.'s method of organizing, the craft unit was appropriate. For the Board's attorney or the court below to search the record for reasons not considered or relied upon by the Board in its unit determination adds to the case facts not present in the decision of the Board and is manifestly unfair. The Board has destroyed the unit claimed by the machinists solely for the two arbitrary reasons afore discussed; it is concerning these rea-

sons only that we make complaint and for which we seek protection against further action of a similar nature.

It is true that the Board also regarded as significant the existence of a substantial C. I. O. minority membership in the tool room. However, the C. I. O. at no time claimed or proved a majority in the tool room, which the I. A. M. did. Evidence of C. I. O. membership, whatever it may be, if made in the face of a majority showing by a rival group, has relevance only to the question of whether an election should be held to determine the choice of type of representative, and has no relevance to the appropriateness as such of the unit in which the membership is claimed. Such a minority showing would merely indicate that the choice of tool room employees was uncertain; not that the tool room was not an appropriate unit. It should be noted that the original C. I. O. petition and complaint made no claim to membership in the tool room unit, and did not include the tool room in the unit requested.

It is submitted that the provisions of section 7 of the act, guaranteeing freedom of choice to employees to choose their own type of representative, obligates the Board to hold elections to determine such choice when a conflict between two admittedly appropriate units arises. It is further submitted that the action of the Board, refusing not only to hold such election but also to designate an historic craft as an appropriate unit for the sole reason of employer activities over which the union had no control, or because of the union's organizational policies prescribed by its constitution, which are no concern of the Board, is arbitrary in the extreme. The American Federation of Labor has encountered no greater threat to the existence of its craft affiliates in the sixty years since its founding than in some of the unit doctrines propounded by the Board. It is earnestly requested that this Court afford protection against such arbitrary decisions by the Board.

III.

IT IS THE DUTY OF THE BOARD TO INVESTIGATE VERIFIED CLAIMS OF A CHANGE IN CHOICE OF A REPRESENTATIVE MADE KNOWN TO THE BOARD PRIOR TO ANY PREVIOUS CERTIFICATION. THE BOARD ERRED IN IGNORING THE CLAIM AND CERTIFYING A RIVAL UNION REPRESENTING ONLY A SMALL PER CENT OF THE EMPLOYEES AS EXCLUSIVE BARGAINING AGENT ON THE BASIS OF A YEAR-OLD MAJORITY STATUS.

The final question presented for review is one on which there is a conflict between the decision of the court below and decisions of the Second and Eighth Circuits. The question concerns the duty of the Board to take into account or to investigate a verified claim of a change in majority status occurring during the long interval between a hearing and a decision and made known to the Board prior to its decision.

It is submitted that the Board has erred in ignoring the existing status of representation among employees of the Serrick Corporation, in ordering the employer to bargain exclusively with an organization which no longer represents a majority, and in refusing to conduct an election as expected and requested. The present argument relates to and challenges sections 1 (e) and 2 (g) (5) of the Board's order (R. 363).

The question raised is a practical one, particularly in view of the long period of time which customarily elapses between the filing of charges and the issuance of a decision in a contested case. Is the mere filing of charges under Section 10 of the National Labor Relations Act, and the issuing of a complaint thereunder, to be held to crystallize the employer-employee relationship as of the time of

the alleged unfair labor practices? Are the employees to be forestalled from exercising their right of selecting a representative of their own choosing and preventing from changing their affiliation, even in the face of a considerable lapse of time?

A. History of Change of Representation and Notice to Board, Which Was Ignored.

The original petition for certification was filed August 16, 1937. During the hearings on the petition and charges it was stipulated that the U. A. W. had 471 signed application cards, and the I. A. M. 298, among production employees (R. 175-176). However, this stipulation was entered into for the purpose of avoiding any delay that would arise from checking and rechecking the cards, and it was stipulated only that the parties could present the cards that each claimed, not that the cards were genuine or would be determinative of the issue concerning representation (R. 159). In a September, 1937, agreement before Circuit Judge Guthrie, of Muncie, Indiana, it was stipulated by the parties then engaged in a strike over representation that the parties would abide by the result of an election to be conducted by the Board in the present case (R. 163-168). The I. A. M. at all times subsequent to the decision expected that an election would be held (R. 84-86, 158-160).

The Board did not decide the case until July 27, 1938. During this period of almost a year both of the rival unions proceeded with organizational activities in anticipation of the expected election. Several months prior to the time the Board decided the case the I. A. M. obtained a 90 per cent majority membership, and the employer was notified of this fact. Regardless of this notification, however, the company granted a contract to the U. A. W., recognizing it as exclusive bargaining agent. This was done

on July 15, 1938. Immediately thereafter the I. A. M. issued a vigorous protest to the Board by telegram and by verified statement and affidavit, in which C. F. McDonald, Grand Lodge Representative of the I. A. M., set forth, under oath, the fact that a change in representation had occurred and that the I. A. M. represented a majority. Finally a lengthy letter to the same effect was written by counsel of the I. A. M. to the Board. The Board was asked to investigate this claim and to take appropriate action thereon (R. 11-15). The Board, however, refused even to investigate the claim of the I. A. M.

It is submitted that the Board acted arbitrarily in certifying the U. A. W. as exclusive representative of all production employees in the face of the verified notification and strenuous protest made with it prior to its decision. The court below upheld the Board's action in this respect, stating, as reasons, first, that any shift in affiliation might have been occasioned by the employer's unfair practices in favor of the I. A. M. (although the employer entered into an exclusive contract with the U. A. W., thereby favoring that organization, not the I. A. M.), and, second, that at the time of the hearing there was no doubt as to the majority, and that subsequent "*ex parte* and self-serving assertions that a shift has occurred * * * would make a merry-go-round of the act" since "like representations could be made in turn following each new one by the contending unions in order to prevent or delay a decision contrary to their interests * * *."

B. **Second and Eighth Circuits Hold Contra to Court Below.**

This holding is directly opposed to a holding of the Eighth Circuit in the case of the **Hamilton-Brown Shoe Company v. National Labor Relations Board**, 104 F. (2d) 49. In that case a situation identical to the present one

existed. Subsequent to the hearing, but prior to the decision, a change in representatives from the C. I. O. to the American Federation of Labor had occurred. The Board was notified of this change by letter and by petition. The Board ignored the notification and certified the C. I. O. union as the exclusive bargaining agent. The Court held such conduct arbitrary and contrary to the letter and spirit of the act. The Court stated:

> "The Supreme Court, in Consolidated Edison Co. v. National Labor Relations Board, supra, held that the refusal of the Board to permit the employers to adduce certain additional testimony which could have been received without undue delay, was unreasonable and arbitrary. Having in mind that it is the fundamental policy of the Act to permit employees freely to choose their representatives, it follows that the employees have a right to change their choice, and when that fact has been brought sharply to the attention of the Board, as in this case, it was, **we think, the duty of the Board to investigate the claim.**" (Emphasis ours.)
>
> • • • • • • •
>
> "So, in the instant case, the Board, after giving effect to its order to restore the *status quo* by reinstating the employees wrongfully discharged, and by disestablishing the company union, and requiring the employer to cease and desist from recognizing such union as a bargaining agency, should settle the question as to representation by requiring an election. We are of the view that it would be arbitrary and unfair, and not in keeping with either the letter or the spirit of the Act, to require the employer and its employees to conduct their negotiations through an agency not fairly representing a majority of the employees. In the face of the record as it stands, it cannot be assumed that the Union is now the accredited representative of the employees, but the showing made, and it stands without dispute, is at least sufficient to re-

quire investigation and to cause a court of equity to inquire whether an order requiring both the employer and the employees to recognize the Union as the bargaining agency should be enforced in the face of circumstances making such enforcement unwise, if not illegal. A court of equity will not do useless, unjust, or unequitable things. In re Hawkins Mortgage Co. (C. C. A. 7), 45 Fed. (2d) 937. Courts do not deal with abstractions. The proceedings here are substantially proceedings in equity in that equitable rules are applicable. National Labor Relations Board v. Cherry Cotton Mills (C. C. A. 5), 98 Fed. (2d) 4444. This court is granted power to modify orders of the Board [Section 10 (f)]."

The holding of the court below is likewise in direct conflict with the decision of the Second Circuit in **National Labor Relations Board v. National Licorice Co.**, 104 Fed. (2d) 655, decided June 12, 1939. In that case a period of two years had elapsed since the time when the company had refused to bargain with a union then representing a majority. Further, the union had then just organized the shop (a circumstance likewise present in the instant case). The Court held that, under such circumstances, the order of the Board, directing the company to bargain with the union representing a majority at the time of the hearing, should be modified to provide for the holding of an election. The Court stated in this respect as follows:

"This leaves only paragraphs 1 (d), 1 (e), 11 (c), 11 (d) and 11 (e) of the order. Paragraphs 1 (e), 11 (d) and 11 (e) we will not disturb, but 1 (e) and 11 (d) seem to us to require some modification. The finding of the Board that the union represented the respondent's workmen necessarily related to July, 1937, at which time the union had only just organized the shop. The strike followed in two weeks and failed, and then came the company union; we know nothing more. It is now nearly two years after the tentative

> organization of the factory, for it was really only tentative, the applicants not having yet been accepted; and our order will be conditioned upon the Board's ascertaining by a new election whether the union is now the choice of the majority; otherwise there is some chance that it may not represent their present wishes. In **National Labor Relations Board v. Remington Rand, Inc.**, 94 Fed. (2) 862, 869 (C. C. A. 2), we held that the 'Joint Board' has a continued presumptive authority which the employer must overcome by evidence, but in that case the union had been established a year before the trouble arose. Here there is no ground for such a presumption. Moreover, the workmen are few, and an election will not be an onerous condition."

The decisions of the circuits are in conflict. The factual situations cannot be differentiated. Which view is correct? It is submitted that the theory and the reasoning of the Eighth and Second Circuits is more consonant with the spirit and purpose of the act and more in accord with practical realities.

C. Entirely Practicable for Board to Investigate Claims of Change. Not to Do So Productive of Turmoil and Chaos.

The argument of the court below is that, under the rule contended for, interminable delay would result so that the act would become a "merry-go-round." The answer to this argument is that the Board need merely hold an election in cases such as the present one, where it is informed under oath that there has been a change in choice of a representative. The holding of an election, by secret ballot, after ordering the employer to cease any unfair practices he might have engaged in at such time the Board is satisfied that the effect of these practices has worn off, will conclusively settle the problem for a period of an-

other year at least, since the Board's usual rule is that certification following an election will be binding for a period of one year. It will be unnecessary to hold a number of successive hearings upon successive representations of changes of majority, as predicted by the court below.

Nor is it necessary in all cases to hold elections if preliminary investigation reveals there is no merit in the claim of change. The Board, by its "merry-go-round" argument, is raising a spectre which does not exist. The *filing of successive* frivolous allegations *of changes* in representation is well within the Board's power to control, just as at the present time it controls the filing of successive petitions for representation under section 9 of the act by briefly investigating the bona fides of the petitions and refusing to entertain those which it discovers are frivolous. If, on preliminary investigation, the union is unable to produce satisfactory evidence in support of its claim, the claim can be ignored, and no one could accuse the Board of acting in a high-handed or arbitrary fashion. If, however, the investigation reveals that the claim is valid, certainly only disruption and chaos can result from disregarding the changed circumstances. Certainly no possible policy of the act is effectuated by ignoring the change, but, on the contrary, industrial strife would be fomented. In the present case, however, the Board made absolutely no attempt to make an investigation, preliminary or otherwise, but certified an organization in the face of a sworn statement that that organization represented only a small minority of the employees. Can it then be said that the Board acted in a reasonable manner? We submit that it has not.

If there is any question of the unworkability of the act, that question is a much more acute and real one under the construction contended for by the Board whereby an employer is obliged to continue to bargain with a union which

in fact represents only a small minority in its plant, and the wishes of the employees are entirely disregarded. Such a construction would stir up and give rise to exactly that industrial turmoil and unrest which the act was designed to prevent, for it is certain that employees will not easily submit to an order depriving them of their desired bargaining agent, contrary to the rights guaranteed them to choose and change their representative at their will.

D. Right of Employees to Select Representative Includes Right to Change Representatives.

Whatever unworkability may exist is inevitable in a democratic system of administration of labor relations by government tribunals. To refuse the right of at least a preliminary investigation into the validity of a claim affecting a proposed order after a long lapse of time between hearing and order for the sake of any imagined "workability" is to deny employees the very rights for the protection of which the act was passed.

Courts of equity have never sanctioned action resulting in unjust or useless ends. Consider the confusion and the injustice if, for instance, under the Board's "presumptive representation theory," the employer entered into a closed-shop contract with a minority representative which he has been ordered to deal with in spite of a change of representation. There is no way in which the actual majority representative could challenge such contract, and it would be conclusively and indefinitely barred from its right to serve as bargaining representative, and a great majority of employees forced into a union not of their own choosing.

The act grants to employees full freedom of choosing representatives. This freedom includes the liberty to change representatives, a liberty which is denied to the employees of the Serrick Corporation.

The Board asserts as an additional reason for its order that it is its duty to restore the "status quo" as it existed

at the time of the unfair practices. However, this duty would exist only in so far as the "status quo" has been affected or altered by activities of the employer. In so far as the "status quo" has been altered by the acts of the employees themselves, or by circumstances over which the employer has no control, the Board has no power to order a restoration. In the present case the Board does not claim as a fact, the record does not indicate, and there is no contenion that the present majority achieved by the petitioner is the result of the employer's unfair tactics concerning which the original hearing was held. In the present case petitioner claims, and it is a fact which it should at least be permitted to establish at a hearing, that it represents a majority of the employees who have become affiliated of their own choice, free from coercion of any kind on the part of the employer, and in no way the result of the practices complained of in the original complaint. A majority of the Serrick Company employees have simply changed their minds as to their choice of a representative, an occurrence not infrequent in this day of competitive unionism. Any attempt to restore a previous status quo must and can be made only so far as is consistent with existing facts brought to the Board's attention, and as is consistent with the purposes of the restoration, which is solely to remove the effect of the unfair labor practices of the employer and to oblige him to conform to the act in the future. Accordingly, the most important consideration is: What caused the change? The Board could not, for instance, presently order an employer to deal with a representative no longer in existence (many unions have dissolved in less time than the Board took to decide this case), or it could not order an employer to deal exclusively with a past majority, when that majority no longer exists, as where a large portion of the employees had left the plant for more remunerative employment elsewhere.

In the last analysis the Board is here trying to restore

what amounts to a previous mental condition of the employees—their desire and choice of a representative—something which has nothing whatsoever to do with requiring the employer to comply with the National Labor Relations Act. The rule of restoring a status quo is particularly difficult to apply in the case of an employer's unfair practice of refusing to bargain, especially after a long elapse of time between the commission of the practice and the final order. That which determines an employer's duty to bargain and the employer's right to a representative depends on too many considerations outside of the employer's control for the Board to be able to apply dogmatic principles. To bargain exclusively is not a single act remedied by a single performance on the part of the employer. It calls for a continued course of conduct by the employer and a continued desire to bargain through a particular representative by the employees. It is totally unlike an order requiring an employer to reinstate someone who has been discharged. Even in reinstatement cases the Board has taken into consideration factors and circumstances arising subsequent to the time of the unlawful discharge, as where, for instance, it is brought to the Board's attention that the employee to be reinstated has obtained substantially equivalent employment elsewhere, or that an actual decrease in business has necessitated the elimination of the particular job to which the employee was to be reinstated, or that the employee has died, or that some other factor has entered, making the order of reinstatement either impossible, unnecessary or otherwise improper.

If there is any fear of a continued inclination on the part of the employer to disobey the bargaining provisions of the act, it can be set at rest by requiring him to bargain with whichever union the Board ascertains, by election or otherwise, is presently the representative of a majority. The only valid purpose of an affirmative order by the Board, under the act, is to obtain present and future com-

pliance by the employer with the requirement of the act that he bargain with the representative of a majority of his employees—not to redress a union for a past grievance.

The Board relies upon the holding of this Court in **National Labor Relations Board v. Bradford Dyeing Corporation,** ... U. S. ..., decided May 20, 1940. In that case the employer had contended that, since the union had lost its majority membership four days after it had requested recognition as exclusive bargaining agent, the Board should not require it to deal with such organization. The Board had specifically found that the employer had caused the loss in membership through its unfair practices. Obviously, in such a case the employer's contention was unsound. In the present case there is no such finding by the Board in respect to the loss of membership by the U. A. W. between the decision and the hearing. Further, the great difference in time between a period of four days and a period of almost one year is sufficient in itself to differentiate the **Bradford** case from the present one. Any presumption that might exist that the loss of membership was due to continued unfair practices of the employer can exist for only a reasonable period of time. Surely, it is extremely unreasonable to continue such presumption for indefinite periods. In the present case the lapse of almost a year is a consideration of importance. If freedom of choice guaranteed by the act is to be permitted, the employees' liberty to change their bargaining representative should not be indefinitely frozen by the filing of charges. Further, any presumption that the company in the present case might have favored the I. A. M., and continued to interfere with the U. A. W., is conclusively rebutted by the fact that in July, 1938, before the decision, but after it had been given notice of a shift in membership, the company entered into an exclusive contract with the U. A. W. covering the entire plant.

E. National Licorice Case Determinative.

The precise situation involved in the present case was before this Court in the case of **National Licorice Co. v. National Labor Relations Board**, decided May 4, 1940. The Court of Appeals of the Second Circuit directed the Board to hold an election to determine the choice of representatives because of the lapse of time, contrary to the Board's order directing the company to recognize and deal exclusively with the complaining union. This Court upheld that decision in the following language:

> "As will presently appear, the bargaining committee and the contracts obtained through its mediation were both the products of unfair labor practices, and the Committee, under the Board's order; was not entitled to recognition as the bargaining representative of the employees. Such injury, if any, as the petitioner might have suffered from the Board's order requiring it to recognize and bargain with the Union, is avoided by the direction of the Court of Appeals that this part of the order be conditioned upon a determination by an election that the Union is still the choice of a majority of the employees. The Board has not petitioned for certiorari and does not complain of this direction."

It is submitted that the **National Licorice Company** case, and not the **Bradford Company** case, is decisive of the present controversy.

F. Prior to Board Decision Application Should Be Made to Board, Not Court.

The court below indicated that petitioners should have applied to a Circuit Court for leave to adduce additional evidence, under Section 10 (e) of the Act. It is submitted that the provision of section 10 (e) was intended to apply to a situation where the need for additional evidence occurs after the Board has entered a decision and order.

10 (e) relates in its entirety to applicable procedure following the making of a decision and order by the Board. In the present case the request was directed to the Board prior to the time that it had made its decision and order. It is only after a decision or order has been entered that the jurisdiction of the Circuit Court over the proceedings arises. It would seem only appropriate that any motion to adduce additional testimony should be addressed to the Board rather than the Court prior to the time a decision or order is made.

Following the refusal of the Board to take notice of the claim of change in representation, the case was appealed to the court below, and the Court was requested in the appeal to permit the taking of additional testimony or to order the holding of an election. It would seem a rather narrow and technical view which would not consider such a procedure in the same nature as a motion to the Court, if that is to be required.

It is submitted that that portion of the Board's order [Sec. 1 (e), Sec. 2 (g) (5)] requiring the employer to deal exclusively with the U. A. W. is unlawful and contrary to the purposes and policies of the act.

CONCLUSION.

It is respectfully submitted that the Board's decision and order, in so far as it finds:

1. That the I. A. M. had been assisted by the employer in obtaining its majority, and that therefore the contract of August 6th was invalid;

2. That the tool room employees did not constitute an appropriate unit for collective bargaining, or in refusing to hold an election to ascertain the choice of the tool and die makers in this respect;

3. That the employer is required to deal exclusively with the U. A. W. as representative of all pro-

duction workers, ignoring the claims of the I. A. M. that it represented a majority in the production department and refusing to conduct an election;

is erroneous and contrary to the purpose and policy of the act; and that the court below erred in sustaining such decision and order.

Respectfully submitted,

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
Counsel for Appellants.

Dated September 14, 1940.
736 Bowen Building,
Washington, D. C.

BLANK PAGE

BLANK PAGE

FILE COPY

FILED
MAR 14 1940

No. [redacted] 16

In the Supreme Court of the United States

OCTOBER TERM, 1939

INTERNATIONAL ASSOCIATION OF MACHINISTS, TOOL & DIE MAKERS LODGE NO. 35, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AND PRODUCTION LODGE NO. 1200, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

BLANK PAGE

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Argument	8
I. The finding of the Board that the I. A. M. was "assisted" by the unfair labor practices of the Company is supported by substantial evidence	8
II. The Board's determination concerning the appropriate unit was not arbitrary	15
III. The bargaining order was proper	20
Conclusion	23
Appendix	24

CITATIONS

Cases:

American Federation of Labor et al. v. *National Labor Relations Board*, No. 70, this Term, decided January 2, 1940	7
Association of C. E. of A., T. & S. F. Ry. System v. *Brotherhood of Ry. and S. S. Clerks*, 85 F. (2d) 152	19
Brotherhood of Ry. Trainmen v. *National Mediation Board*, 88 F. (2d) 757	19
Federal Trade Commission v. *R. F. Keppel & Bro.*, 291 U. S. 304	19
Hamilton-Brown Shoe Co. v. *National Labor Relations Board*, 104 F. (2d) 49	21
Matter of Globe Machine and Stamping Co., 3. N. L. R. B. 294	16
Nashville, C. & St. L. Ry. v. *Ry. Employees' Dept.*, 93 F. (2d) 340, certiorari denied, 303 U. S. 649	19
National Labor Relations Board v. *Biles-Coleman Lumber Co.*, 96 F. (2d) 197, 98 F. (2d) 18	21
National Labor Relations Board et al. v. *Bradford Dyeing Association* (U. S. A.), No. 588, this Term, certiorari granted, January 15, 1940	22, 23
National Labor Relations Board v. *Carlisle Lumber Co.*, 94 F. (2d) 138, certiorari denied, 304 U. S. 575	18
National Labor Relations Board v. *The Falk Corporation*, No. 460, this Term, decided January 2, 1940	7, 14, 17

; National Labor Relations Board v. Highland Park Mfg. Co. (C.C.A. 4), decided March 11, 1940.

Cases—Continued.

	Page
National Labor Relations Board v. *International Brotherhood of Electrical Workers et al.*, No. 253, this Term, decided January 2, 1940	7
National Labor Relations Board v. *Louisville Refining Co.*, 102 F. (2d) 678 certiorari denied, No. 105, this Term	21
National Labor Relations Board v. *Lund*, 103 F. (2d) 815	19
National Labor Relations Board v. *National Licorice Co.*, No. 272, this Term, decided March 4, 1940	14, 16, 17
National Labor Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261	19
National Labor Relations Board v. *Remington-Rand, Inc.*, 94 F. (2d) 862 certiorari denied, 304 U. S. 576	21
National Labor Relations Board v. *Waterman Steamship Corp.*, No. 193, this Term, decided February 12, 1940	14
United States Navigation Co. v. *Cunard S. S. Co.*, 284 U. S. 474	19
Statute:	
National Labor Relations Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. Supp. IV, Sec. 151 *et seq.*	3
Miscellaneous:	
Third Annual Report of the National Labor Relations Board (1938)	16, 19

In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 732

INTERNATIONAL ASSOCIATION OF MACHINISTS, TOOL & DIE MAKERS LODGE NO. 35, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AND PRODUCTION LODGE NO. 1200, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 733–755) is not yet reported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 667–702) are reported in 8 N. L. R. B. 621.

JURISDICTION

The decree of the court below (R. 756) was entered on November 20, 1939. The petition for a writ of certiorari was filed on February 17, 1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether there was substantial evidence supporting the Board's findings that the I. A. M. was assisted by unfair labor practices of the employer prior to its entering into a closed-shop contract with the employers, so as to render the contract invalid under the proviso to Section 8 (3) of the Act.

2. Whether in the circumstances of this case the Board acted arbitrarily in finding that a unit comprising most of the employer's production employees, including those in a toolroom, was an appropriate one for collective bargaining purposes within the meaning of Section 9 (a) and (b) of the Act.

3. Whether it was an abuse of discretion in the circumstances of this case for the Board, upon findings that the employer had refused to bargain collectively with a labor organization designated by a majority of the employees in the appropriate unit, to require the employer to bargain with that labor

organization despite a claim, submitted to the Board shortly prior to issuance of its order, that another labor organization then represented a majority of the employees in the appropriate unit.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. Supp. IV, Sec. 151, *et seq.*) are set forth in the Appendix, *infra,* pp. 24–27.

STATEMENT

Pursuant to charges and amended charges filed by the United Automobile Workers of America, Local No. 459 (R. 454–459), a labor organization hereafter called the U. A. W., the National Labor Relations Board, by its Regional Director at Indianapolis, Indiana, issued a complaint against The Serrick Corporation, hereinafter called the Company, on October 5, 1937 (R. 447–453).[1] The complaint, as thereafter amended (R. 468–469, 481, 493–499), alleged that the Company had engaged

[1] The U. A. W. also filed a petition under Section 9 (c) of the Act for the investigation and certification of representatives (R. 462–463), which, as amended, alleged that the unit appropriate for collective bargaining purposes consisted of all of the Company's employees, exclusive only of the buffers and metal polishers, foremen, supervisory officials, and office employees engaged in clerical work. On September 27, 1937, the Board directed such investigation to be held, and consolidated the petition for purposes of hearing with the proceedings arising out of the charges of unfair labor practices filed by the U. A. W. (R. 465–466).

and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act.

Copies of the complaint were served upon petitioner International Association of Machinists, hereinafter called the I. A. M., upon the Company, and upon the U. A. W. (R. 459–460). The Company filed an answer, denying that it had engaged in the unfair labor practices alleged.

Pursuant to notice, a hearing was held in Muncie, Indiana, from October 18 through November 15, 1937, before a Trial Examiner of the Board. The Company and the U. A. W. were represented by counsel, while petitioners appeared by their Grand Lodge representative. All participated in the hearing.

On March 4, 1937, the Trial Examiner filed his Intermediate Report, finding that the Company had engaged in part of the unfair labor practices alleged, but recommending, insofar as is here material, dismissal of that part of the complaint which alleged that the discharge of certain named toolroom employees for their refusal to join the I. A. M. violated Section 8 (3) of the Act. The Trial Examiner took the position that a closed-shop contract between the Company and petitioner Lodge No. 35 of the I. A. M. constituted a valid reason for these discharges (R. 648–652, 663–664). The U. A. W. filed exceptions to the report (R. 664–665). None of the parties requested oral argument before the Board, although advised of their

right so to do (R. 666). On July 27, 1938, the Board rendered its decision, setting forth its findings of fact, conclusions of law, and order (R. 667–702).

The findings of the Board with respect to the unfair labor practices and the appropriate unit are detailed under Points I and II, respectively, of the Argument (*infra,* pp. 8–20). In brief outline, the Board found that the Company, by assisting the I. A. M. and opposing the U. A. W. and by other acts, had interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, in violation of Section 8 (1) of the Act (R. 695–696, 698); that the Company's discharge of 18 toolroom employees because of their failure to join the I. A. M. was in violation of Section 8 (3) of the Act, for the reason that the closed-shop contract, pursuant to which the discharges occurred, was illegal under the proviso to that section in that (a) it was made with a labor organization "assisted" by unfair labor practices, and (b) the toolroom, the unit covered by the contract, was not an appropriate unit for collective-bargaining purposes under the circumstances of this case (R. 675–686); that at all times after August 10, 1937, the Company, contrary to Section 8 (5) of the Act, refused to bargain collectively with the U. A. W., although that organization represented a majority of its employees in an appropriate unit, which the Board found consisted of all of the employees at the Company's Muncie plant, in-

cluding toolroom employees, but excluding buffers and polishers, supervisors, and office employees engaged in clerical work (R. 688–695); and that the Company, in violation of Section 8 (2) of the Act, had from December 1936 to September 16, 1937, dominated and interfered with the administration of, and had contributed support to, a labor organization of its employees known as the Acme Welfare Association.

Upon the basis of these findings, the order of the Board (R. 698–702) requires the Company to cease and desist (1) from giving effect to its closed-shop contract with the I. A. M., provided, however, that the Company is not precluded from hereafter entering into such a contract with the I. A. M. or any other labor organization if such labor organization is the authorized representative of the employees in an appropriate unit, as provided in Section 9 (a) of the Act, and has not been assisted by any unfair labor practices; (2) from refusing to bargain collectively with the U. A. W. as the exclusive representative of its employees in the unit found by the Board to be appropriate; and (3) from its various other unfair labor practices. As affirmative action designed to effectuate the policies of the Act, the Board ordered the Company to reinstate with back pay the toolroom employees discriminatorily discharged and to post and maintain appropriate notices.[2] Shortly after the order was issued the

[2] Having found, as part of the case arising upon the charges filed under Section 10 (b) of the Act, that the

Company formally notified the Board that it had complied and would comply fully with its terms (R. 703–709).

On September 29, 1938, petitioners filed in the court below a petition to review and set aside the Board's order (R. 1–7). The petition to review attacked only those portions of the order (paragraphs 1 (d) and 1 (e), R. 99), requiring the Company to cease and desist (1) from giving effect to its closed-shop contract with the I. A. M.; and (2) from refusing to bargain collectively with the U. A. W. as the exclusive representative of its employees in the unit found to be appropriate (R. 7).[3]

U. A. W. was the accredited representative of the employees in an appropriate unit, it was unnecessary for the Board to act upon the petition which had been filed by the U. A. W. under Section 9 (c) of the Act for certification of representatives. The petition was, therefore, dismissed by the Board (R. 697). Petitioners erroneously characterize, and in some respects treat, the Board's finding and order in the proceeding under Section 10 (b) as a certification of the U. A. W. under Section 9 (c) (Pet. 6, 7, 26–33). Compare *National Labor Relations Board* v. *The Falk Corporation*, No. 460, this Term, decided January 2, 1940; *National Labor Relations Board* v. *International Brotherhood of Electrical Workers et al.*, No. 253, this Term, decided January 2, 1940; *American Federation of Labor et al.* v. *National Labor Relations Board*, No. 70, this Term, decided January 2, 1940.

[3] Petitioners and the Board stipulated (R. 728–730) in general effect that the facts found and inferences drawn by the Board basic to those parts of its order review of which was not sought were "fully established and conclusive" because "amply supported by substantial and competent evidence," and that the court below should so treat them.

215870—40——2

The Board answered praying that the petition to review be denied (R. 17–20).

On November 20, 1939, the court below rendered its decision (R. 733–755) affirming the order of the Board. On that date, a decree was entered accordingly (R. 756).[4]

ARGUMENT

I

THE FINDING OF THE BOARD THAT THE I. A. M. WAS "ASSISTED" BY THE UNFAIR LABOR PRACTICES OF THE COMPANY IS SUPPORTED BY SUBSTANTIAL EVIDENCE

The Board found (R. 684–685) that the I. A. M. was assisted by the Company's unfair labor practices, within the purview of the proviso to Section 8 (3) of the Act (*infra*, pp. 24–25), which renders invalid any closed-shop contract made with an organization so aided. Accordingly, the Board held that the toolroom contract was invalid and ordered the Company to cease giving effect to it (R. 699). The court below upheld the Board's findings and order (R. 750, 752).[5]

---

[4] The effect of the decree is merely to deny the petition to review. The Board did not request enforcement against the Company or make it a party.

[5] The Board also held the toolroom contract invalid upon the additional ground that the toolroom was not an appropriate bargaining unit at the time the contract was made (R. 685, 689). Under Point II (*infra*, pp. 15–20), we show that the Board's finding upon the unit question was not arbitrary, and that the court below properly sustained it. Ac-

In the court below petitioners stipulated that the bulk of the findings relating to the Company's unfair labor practices were correct (R. 728–730), and petitioners now challenge (Pet. 7, 8, 12, 13–18) the sufficiency of the evidence only in respect of the finding that four employees active in the I. A. M. campaign during the period immediately preceding the execution of the toolroom contract were supervisors. But this narrow attack reaches only a small segment of the pertinent findings; as the court below said (R. 738) "The toolroom episode was merely one phase of a plant-wide controversy lasting from May to October" and the events in the toolroom were but "integral parts" of "the general contemporaneous current."

The following findings are either conceded or unattacked.[6] Prior to the appearance of the U. A. W., the Company maintained in its plant an "inside" employees Association whose president was the Company's personnel director, Lewis (R. 673, 676). In the early spring of 1937 Lewis and

cordingly, aside from the fact that neither finding raises a question worthy of review, petitioners could not obtain a reversal as to the toolroom contract unless they could establish that there was insufficient support for both findings basic to the contract's invalidity.

[6] Reference is made in the following recitation of the Board's findings to certain individuals employed in the toolroom named Fouts, Shock, Bolander, and Dininger. That the conduct of those individuals was as stated in the findings, is conceded or not now questioned; petitioners do question whether they were properly found to occupy supervisory positions, a matter considered *infra*, pp. 14–15.

Works Manager Poole urged the employees to use the Association as their representative rather than resort to an "outside" labor organization (R. 673, 676). In May 1937, the Association activity was intensified to resist U. A. W. organizational activity at the plant (R. 673–674). At an Association meeting about June 1, Lewis warned the employees against the C. I. O.[7] "invasion" and called for a rising vote of adherence to the Association (R. 674, 677–678); Lewis contemporaneously advised the Association committeemen that "we don't want the C. I. O. in this plant" and that the Company had that organization's meetings under surveillance (R. 676). Thereupon a widespread drive for membership in the Association and in opposition to the U. A. W. took place, participated in by supervisors and ordinary employees upon company time and property and marked by threats of discharge, and discharges, of those who refused to join (R. 674, 677).

Particular emphasis in this campaign was placed upon the toolroom (R. 674, 678). Lewis assigned to Sharpe, Association committeeman for the toolroom, the task of persuading the employees there to join the Association (R. 674). McCoy, the toolroom foreman, encouraged Sharpe (R. 678). Despite the Company's efforts to build the Association into an effective instrument to block the U. A. W.,

[7] The U. A. W. is affiliated with the Congress of Industrial Organizations (R. 672).

the Association failed to secure the adherence of the bulk of the employees (R. 678).

With the decline of the Association by mid-July, Shimer, the night superintendent of the plant and Shock, an employee in the toolroom who had favored the Association and whom the Board found was a supervisor, reported to the toolroom employees that the Company would not recognize the C. I. O. but would recognize an A. F. of L. union (R. 678–679). Coincidentally one Fouts, who had actively supported the Company's drive in behalf of the Association and whom the Board found was a supervisor (R. 673–674, 680), accompanied by two other toolroom employees named Byroad and Baker, laid before Shock a proposal to organize a union of toolmen to be affiliated with the A. F. of L. (R. 679). Following Shock's pledge to cooperate, Byroad polled some, but not all, of the toolroom employees, and it was announced that 80 percent of the toolroom employees favored an A. F. of L. organization (R. 679).

Fouts and Shock then sent Byroad to communicate with an I. A. M.[8] organizer who held a meeting on July 28 at which 34 out of 63 toolroom employees signed I. A. M. application cards (R. 679). Following this meeting, Fouts engaged in intensive solicitation on behalf of the I. A. M. (R. 680) in the presence of McCoy, the ranking supervisory

[8] The I. A. M. is affiliated with the American Federation of Labor (R. 672).

official in the toolroom (R. 681). Dininger and Bolander, who the Board found were foremen in the toolroom, joined the I. A. M. and lent their support to its membership drive (R. 680–681). Fouts stated to various toolroom employees that the purpose of this drive was to repel the U. A. W., and threatened them with loss of their jobs if they did not join the I. A. M. (R. 680). Personnel Director Lewis inquired of two employees why they had not joined and advised them to have but "one organization in here" (R. 681). Ordinary employees likewise engaged in I. A. M. solicitation upon working time under circumstances which the Board found compelled the conclusion that Foreman McCoy knew and approved of their efforts (R. 681–682).

On August 3 the I. A. M. organizer presented to Works Manager Westlund a form of contract covering the toolroom employees and containing a variety of proposals; after some discussion, Westlund agreed to all provisions but those concerning the closed-shop and hours of work (R. 682). At a second conference that afternoon, Shock, acting as spokesman for the I. A. M., advised Murphy, the Company's vice president and general manager, that the purpose of the contract was to "keep the C. I. O. out of the toolroom" and that "after the trouble was settled" the Company "could tear up the contract" (R. 682–683). On August 11, the contract (which was dated back to August 6) was signed (R. 684). On August 13 all toolroom em-

ployees who declined to apply for I. A. M. membership, 18 in number, were discharged (R. 684, 686).

On August 10 and thereafter, the Company refused to bargain with the U. A. W. (R. 690–695). In the course of these negotiations, the Company distributed to the employees a circular taking note of a feeling of dissatisfaction and unrest, attributing this to "outsiders," hinting that the plant might be closed, urging the employees not to be fooled by the "promises" of "strangers," and declaring the Company's intention not to deal with "irresponsible organizations" (R. 691–692). Simultaneously, the I. A. M. began a campaign, assisted by foremen and other supervisory employees in the production departments, to organize the production workers (R. 695–696). On August 21, one U. A. W. production employee, after being warned by her foreman to "join up with the Company or the A. F. of L." was discharged because of her U. A. W. membership (R. 687).

This synopsis of the main outlines of the uncontested findings demonstrates the full extent to which the I. A. M. was assisted by the Company's unfair labor practices.* There is, therefore, no oc-

---

*The court below, after reviewing the circumstances recited above, said (R. 743):

"This mere recital of principal events disclosed sufficiently the employer's determined purpose, never relaxed, to have nothing to do with the U. A. W. and to use the I. A. M. to keep U. A. W. out of the toolroom and the plant."

casion presented for a review of the sufficiency of the evidence to support the Board's findings that Fouts, Shock, Bolander, and Dininger were supervisory employees in the toolroom; those subsidiary findings plainly are not essential supports of the Board's ultimate conclusion and fall far short of raising a question worthy of review. *National Labor Relations Board* v. *National Licorice Co.*, No. 272, this Term, decided March 4, 1940; *National Labor Relations Board* v. *The Falk Corporation*, No. 460, this Term, decided January 2, 1940; *National Labor Relations Board* v. *Waterman Steamship Corp.*, No. 193, this Term, decided February 12, 1940. There is, moreover, ample evidence that these men were possessed of authority to direct employees in their work, coupled with the power to recommend for hire and discharge; and that, having engaged in activities to establish a labor organization favored by the Company (both in respect of the Association, and, when that failed, the I. A. M.) they were regarded by the employees as management representatives (R. 680–681; 42, 54, 73, 77, 89, 90, 99, 104, 120, 165, 307, 309, 358).[10] The court

[10] Petitioners claim (Pet. 8, 16) that the Board stipulated at the hearing that Fouts, Shock, Bolander, and Dininger were not supervisory employees. Examination of the stipulation (R. 483–492) indicates that its purpose was to reflect the names and status of employees as listed and classified by the Company upon its pay roll. Such a stipulation did not prevent the Board from showing that employees not listed by the Company upon its records as supervisors nevertheless enjoyed a supervisory status, and the fact that this inquiry was made at the hearing clearly indi-

concluded that "the evidence here sustains the Board in finding that the active organizers, Fouts, Shock, Bolander, *et al.*, had supervisory capacity but independently of that it also sustains the ultimate finding that they acted for and on behalf of the employer" (R. 751).

II

THE BOARD'S DETERMINATION CONCERNING THE APPROPRIATE UNIT WAS NOT ARBITRARY

The Board's complaint in the unfair labor practice case alleged that the U. A. W. had requested the Company to bargain with it as majority representative of the employees in the plant unit, including the toolroom employees, that the Company had refused to do so, and that the refusal violated Section 8 (5) of the Act (R. 452–453). Consequently, the Board was called upon to decide whether the Company had engaged in the unfair labor practice charged, and in that connection to determine, upon the record made at the hearing, whether the unit alleged in the complaint was one appropriate for collective bargaining purposes. The Board found that it was (R. 689).

The Board's determination rests upon two principal bases. The first of these is that the Company had coerced the toolroom employees to join the I.

---

cates that the stipulation was so understood by the parties. The court below, in which petitioners strongly pressed this same claim, appears to have rejected it in pointing out (R. 748) that these four employees "had actual, though not officially nominal, supervisory capacity."

A. M. toolroom lodge by unfair labor practices, so that their action in joining that lodge could not be regarded as a free expression of their desire for a toolroom unit. Accordingly, the Board held that this case presented no occasion for application of the general principle, theretofore followed by the Board in making unit determinations, of following the wishes of the craft employees themselves where a conflict exists between a craft and a larger unit and other considerations are equally balanced."[11]

This view of the Board is manifestly reasonable; the Board should not give effect to units whose ostensible choice by employees is the result of their employer's coercive practices, any more than it should recognize representatives whose selection is the product of such practices. *Cf. National Labor Relations Board* v. *National Licorice Co.*, No. 272, this Term, decided March 4, 1940. Petitioners assert (pp. 22–24) that a choice so coerced and interfered with must nevertheless be given paramount weight, lest employers, by favoring unwilling unions, dictate or destroy units otherwise appropriate. That did not happen here, and a speculation that the Board is not equipped to uncover and deal with such attempts when made

[11] This is the so-called Globe doctrine, announced in *Matter of Globe Machine and Stamping Co.*, 3 N. L. R. B. 294. For a discussion of it in greater detail see Third Annual Report of the National Labor Relations Board (1938), pp. 167–174.

affords no basis for attacking an obviously correct determination in this case.[12]

Nor is there merit in the argument (Pet. 7, 23) that the Board's refusal to designate a unit which resulted from the Company's unfair labor practices is punitive against the craft union and serves to "destroy" the craft unit. Aside from the fact that no one may demand recognition of a status obtained through a denial of rights guaranteed by public statute (*National Labor Relations Board* v. *National Licorice Co., supra*), the claim ignores the representation provisions of the Act (Section 9) which remain available for the determination of units and representatives preferred by employees of their own free will.[13]

---

[12] Petitioners state (Pet. 23) that in all other like cases the Board has merely ordered the employer to cease and desist from his unfair labor practices and has directed an election, to be held after the effects of the unfair labor practices have been dissipated. This assertion is incorrect. Petitioners apparently refer to that particular class of cases in which a complaint of unfair labor practices not involving a refusal to bargain has been consolidated with a petition for certification of representatives, and an election, necessary in the representation proceeding because of lack of proof of majority, is postponed until conditions indicate that a free choice is possible. See *National Labor Relations Board* v. *The Falk Corporation*, No. 460, this Term, decided January 2, 1940. Such cases have no pertinence here, nor has the Board ever decided a case, substantially similar in its facts, in conflict with the instant one.

[13] The Board made this perfectly clear in attaching to the provision of its order (paragraph 1 (d)) requiring the Company to cease giving effect to the toolroom contract the following proviso (R. 699): "providing, however, that noth-

In addition to the foregoing basis for the Board's holding that the larger unit was, and the toolroom was not, an appropriate bargaining unit, two members of the Board were of opinion that, since the I. A. M. was organizing both toolroom and production employees (although in separate lodges), and since there was functional interdependence and close integration between the toolroom and the remainder of the plant, the I. A. M. was "in direct competition with the U. A. W., which was organizing on an industrial basis. Therefore, the I. A. M. cannot be heard to maintain that the craft unit is appropriate." (R. 689.) Petitioners argue (pp. 24–26) that this holding constitutes a probe into and interference with their internal affairs, which this Court should correct. This contention is manifestly untenable. The Board was not inquiring into the internal affairs of petitioners in any effort to assert control over those affairs, but was merely taking cognizance of the methods of organization pursued by the competing unions; the form self-organization has taken is a factor which casts significant light upon the wishes of employees as to the ap-

---

ing in this Order shall preclude the respondent from hereafter making an agreement with International Association of Machinists, or any other labor organization (not established, maintained, or assisted by any action defined in the National Labor Relations Act as an unfair labor practice) requiring, as a condition of employment, membership therein, if such labor organization is the representative of the employees in an appropriate bargaining unit as provided in Section 9 (a) of said Act;".

propriate unit.[14] The Board was entitled to give weight to this factor, just as it was warranted in attaching significance to the related consideration that the U. A. W. had substantial membership among the toolroom employees (R. 689).[15] It is undeniable that the numerous factors which may be relevant from case to case,[16] and the determination of their relevance and the weight to be attached to them, pose a difficult problem for the Board. But the Act requires that unit determinations be made, and any such decision may be overturned only if the Board's judgment lacks any reasonable basis.[17] The Board's determination of the appro-

---

[14] See Third Annual Report of the National Labor Relations Board (1938), Chap. VII, pp. 163–167.

[15] The statement in the petition (p. 22) that the Board did not consider the U. A. W. membership in the toolroom, or the functional relationship between the toolroom and the remainder of the plant (*supra*, p. 18), is thus incorrect, as the opinion of the court below further shows (R. 752).

[16] For a description of their wide extent see Third Annual Report, *op. cit. supra*, Chap. VII, pp. 156–197.

[17] *National Labor Relations Board* v. *Lund*, 103 F. (2d) 815, 819 (C. C. A. 8); *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 143 (C. C. A. 9), certiorari denied, 304 U. S. 575. See also, *Brotherhood of Ry. Trainmen* v. *National Mediation Board*, 88 F. (2d) 757, 761 (App. D. C.); *Association of C. E. of A., T. & S. F. Ry. System* v. *Brotherhood of Ry. and S. S. Clerks*, 85 F. (2d) 152, 157 (C C. A. 7); *Nashville, C. & St. L. Ry.* v. *Ry. Employees' Dept.*, 93 F. (2d) 340, 342 (C. C. A. 6), certiorari denied, 303 U. S. 649; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270; *United States Navigation Co.* v. *Cunard S. S. Co.*, 284 U. S. 474, 485; *Federal Trade Commission* v. *R. F. Keppel & Bro.*, 291 U S. 304. 314.

priate unit in this case was not arbitrary, and in any event does not present a question of importance calling for review by this Court.

III

THE BARGAINING ORDER WAS PROPER

Petitioners urge (Pet. 7, 8, 12, 26–33) that the Board erred in issuing, and the court below in enforcing, the order requiring the Company to bargain with the U. A. W., because an affidavit of an I. A. M. representative and a letter from its counsel (R. 12–17), submitted to the Board several months after the hearing, advanced the claim that the I. A. M. then represented a majority of the production workers. Petitioners contend that the Board abused its discretion in requiring the Company to bargain with the U. A. W. without "at least" launching an investigation of the claim so advanced (Pet. 7, 26–33).[18] The argument is that, while the U. A. W. was admittedly the accredited representative of a majority of the employees at

[18] Petitioners seriously misrepresent the facts in asserting (Pet. 6, 27–28) that the bargaining order issued despite an agreement between the parties to this case for an election. The U. A. W. and the company were the only parties to the sole agreement ever executed (R. 473–474), and that agreement merely terminated the U. A. W. strike pending an election "at such time" as the Board might determine. As the Board held (R. 694), no election was ever necessary since the stipulation at the hearing established the U. A. W. majority. The other agreements in evidence (R. 474–476, 476–478) were never completely executed because of the successive objections of the company and the I. A. M. as explained in the Board's decision (R. 693–695).

the time of the Company's refusal to bargain (R. 490–491), and while petitioners made no showing at the hearing of any majority shift in the period following the refusal to bargain, the order to bargain was nevertheless rendered improper by the unproved assertion to the Board, on the eve of its decision, that the U. A. W. had been repudiated as majority representative.

The decision below rejecting this contention (R. 735) is in accord with the decisions of four other Circuits. *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2), certiorari denied, 304 U. S. 576, 585; *National Labor Relations Board* v. *Louisville Refining Co.*, 102 F. (2d) 678 (C. C. A. 6), certiorari denied, No. 105, this Term; *National Labor Relations Board* v. *Biles-Coleman Lumber Co.*, 96 F. (2d) 197, 98 F. (2d) 18 (C. C. A. 9). It is in probable conflict with the decision of the Eighth Circuit in *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49, unless weight be attached to the fact that in that case the organization alleging a change in representation intermediate the hearing and the order had requested the Board, prior to its decision, to reopen the proceedings and take evidence upon the claim.[19]

It is the position of the Board that the *Hamilton-Brown* case is erroneous, and that the decision

[19] Petitioners here did not seek a further hearing in support of their assertion of changes in union adherence, either before the Board or by motion in the court below in accordance with Section 10 (e). The court below was of the view that this remedy should have been exhausted (R. 735).

Tightly Bound

of the court below is clearly correct. The Board is so arguing in *National Labor Relations Board et al.* v. *Bradford Dyeing Association* (*U. S. A.*), No. 588 this Term, certiorari granted January 15, 1940, set for argument during the week of March 25, 1940. In its brief in that case the Board presents (pp. 39-60) in detail the considerations it believes relevant to the general question of the propriety of enforcing bargaining orders without regard to possible changes in or loss of representation following a refusal to bargain. In broad outline, those considerations are that: it is necessary and proper to require an employer to recognize and negotiate with the representative with whom he refused to deal in violation of the Act, regardless of possible change in union adherence subsequent to the refusal to bargain, first, in order to dissipate the coercive effects of the unfair labor practices by restoring the right denied the employees and thus to effectuate the Act's fundamental purpose of insuring collective bargaining under free conditions; and, second, in order that the collective-bargaining provisions of the Act shall not be rendered unworkable and unenforceable by the necessity for repeated investigations of new claims of changes in majority.

By its disposition of the *Bradford Dyeing Association* case, the Court will in all probability determine the propriety of the bargaining order in the present case, and the other questions here presented plainly do not warrant the granting of the petition. Accordingly, if the Court believes that

the question as it arises in this case is one which ordinarily might warrant review, the Board requests that action on the petition in this case be delayed until decision of the *Bradford Dyeing Association* case, and that the petition then be disposed of in the light of the decision in that case.

CONCLUSION

The first two questions raised in the petition clearly are not worthy of review in any event. Since the third question will shortly be argued before the Court in the *Bradford Dyeing Association* case it is respectfully requested that, if the Court believes that the question as it arises in this case is one warranting review, action on the petition in this case be delayed until that case is decided and that the petition then be disposed of in the light of the decision in that case.

FRANCIS BIDDLE,
Solicitor General.

THOMAS HARRIS,
Attorney.

CHARLES FAHY,
General Counsel,

ROBERT B. WATTS,
Associate General Counsel,

LAURENCE A. KNAPP,
Assistant General Counsel,

LEONARD APPEL,
Attorney,
National Labor Relations Board.

MARCH 1940.

APPENDIX

The relevant provisions of the National Labo Relations Act (Act of July 5, 1935, c. 372, 49 Stat 449, U. S. C. Supp. IV, Title 29, Sec. 151 *et seq.*) are as follows:

SECTION 7. Employees shall have the righ to self-organization, to form, join, or assis labor organizations, to bargain collectivel through representatives of their own choos ing, and to engage in concerted activitie for the purpose of collective bargaining o other mutual aid or protection.

SECTION 8. It shall be an unfair labo practice for an employer—

(1) To interfere with, restrain, or coere employees in the exercise of the rights guar anteed in section 7.

(2) To dominate or interfere with th formation or administration of any labo organization or contribute financial or othe support to it * * *.

(3) By discrimination in regard to hir or tenure of employment or any term or con dition of employment to encourage or dis courage membership in any labor organiza tion: *Provided,* That nothing in this Act, o in the National Industrial Recovery Ac (U. S. C., Supp. VII, title 15, secs. 701–712) as amended from time to time, or in any cod or agreement approved or prescribed there under, or in any other statute of the Unite States, shall preclude an employer fro making an agreement with a labor organiza tion (not established, maintained, or assiste

by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

SECTION 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. * * *

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of

this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

SECTION. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

* * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatment of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any

district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restaining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. * * * No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or ageney, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. * * *

U. S. GOVERNMENT PRINTING OFFICE: 1940

BLANK PAGE

BLANK PAGE

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Summary of argument	6
Argument	12
I. The closed-shop contract between the company and the I. A. M. is invalid under Section 8 (3) of the Act	12
A. The Board's findings that the employer assisted the I. A. M. by unfair labor practices are sustained by subsidiary findings not challenged by petitioners	13
B. The company was properly held responsible for the activities of the six employees whose "supervisory" status is challenged by petitioners	26
C. At the time of the execution of the closed-shop contract, the I. A. M. was not the freely designated representative of a majority of the toolroom employees	42
D. The bargaining unit covered by the closed-shop contract was not an appropriate unit	43
E. The order requiring the company to cease giving effect to its closed-shop contract with the I. A. M. is valid	61
II. The order requiring the company to bargain collectively with the U. A. W. as the exclusive representative of the production employees is valid	62
Conclusion	79
Appendix	80

TABLE OF AUTHORITIES

Aquilines, Inc. v. *National Labor Relations Board*, 87 F. (2) 146 (C. C. A. 5)	69
American Federation of Labor v. *National Labor Relations Board*, 308 U. S. 401	5
American Manufacturing Co. v. *National Labor Relations Board*, 309 U. S. 629, affirming as modified 106 F. (2d) 61 (C. C. A. 2)	7, 33, 36, 70
Assn. of C. E. of A. T. & S. F. Ry. System v. *Brotherhood of Railway and S. S. Clerks*, 85 F. (2d) 152 (C. C. A. 7)	45

Page

Ballston-Stillwater Knitting Co., Inc., v. *National Labor Relations Board*, 98 F. (2d) 758 (C. C. A. 2) ---- 33
Brotherhood of Railway and S. S. Clerks v. *Nashville C. & St. L. Ry. Co.*, 94 F. (2d) 97 (C. C. A. 6) ---- 45
Brotherhood of Railway Trainmen v. *National Mediation Board* 88 F. (2d) 757 (App. D. C.) ---- 45
Bussmann Mfg. Co. v. *National Labor Relations Board*, 111 F. (2d) 783 (C. C. A. 8) ---- 44, 78
Consolidated Edison Co. v. *National Labor Relations Board*, 305 U. S. 197 ---- 9–10, 25, 62, 73
Consumers Power Co. v. *National Labor Relations Board*, 113 F. (2d) 38 (C. C. A. 6) ---- 7, 33
Continental Oil Co. v. *National Labor Relations Board*, 113 F. (2d) 473 (C. C. A. 10) ---- 78
Cupples Co., Mfrs., v. *National Labor Relations Board*, 106 F. (3d) 100 (C. C. A. 8) ---- 34
Federal Trade Commission v. *R. F. Keppel & Bro.*, 291 U. S. 304 ---- 45
Hamilton-Brown Shoe Co. v. *National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8) ---- 10, 25, 70
H. J. Heinz Co. v. *National Labor Relations Board*, 110 F. (2d) 843 (C. C. A. 6) ---- 7, 33, 35
Humble Oil & Refining Co. v. *National Labor Relations Board*, 113 F. (2d) 85 (C. C. A. 5) ---- 7, 36
Kansas City Power & Light Co. v. *National Labor Relations Board*, 11 F. (2d) 340 (C. C. A. 8) ---- 34, 37
Link-Belt Co. v. *National Labor Relations Board*, 110 F. (2d) 506 (C. C. A. 7) ---- 34
Matter of Danbury & Bethel Fur Company, 1 (old) N. L. R. B. 195 ---- 66
Matter of Globe Machine & Stamping Co., 3 N. L. R. B. 294 ---- 48
Matter of Lyon Oil Refining Co., Decisions of the Petroleum Labor Policy Board ---- 66
Matter of North Carolina Granite Corp., 1 (old) N. L. R. B. 89 ---- 66
Matter of Pacific Greyhound Lines, 9 N. L. R. B. 557 ---- 55
Matter of Standard Forgings Corp., 26 N. L. R. B., No. 122 ---- 52
Nashville, C. & St. L. Ry. v. *Ry. Employees Department*, 93 F. (2d) 340 (C. C. A. 6), cert. denied, 303 U. S. 649 ---- 45
National Labor Relations Board v. *A. S. Abell Co.*, 97 F. (2d) 951 (C. C. A. 4) ---- 33
National Labor Relations Board v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18 (C. C. A. 9) ---- 78
National Labor Relations Board v. *Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7) ---- 72
National Labor Relations Board v. *Bradford Dyeing Ass'n.*, 310 U. S. 318 ---- 25, 65
National Labor Relations Board v. *Brown Paper Mill Co.*, 108 F. (2d) 867 (C. C. A. 5) ---- 33, 37, 75

Page

National Labor Relations Board v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9), cert. denied, 304 U. S. 575 ---- 44

National Labor Relations Board v. *Christian Board of Publication*, 113 F. (2d) 678 (C. C. A. 8) ---- 33, 41

National Labor Relations Board v. *Colten*, 105 F. (2d) 179 (C. C. A. 6) ---- 33

National Labor Relations Board v. *Falk Corp.*, 106 F. (2d) 454 (C. C. A. 7), enforced in full, 308 U. S. 453 ---- 5, 25, 71

National Labor Relations Board v. *Fansteel Metallurgical Corp.*, 306 U. S. 240 ---- 25, 74

National Labor Relations Board v. *Ford Motor Co.*, decided October 8, 1940 (C. C. A. 6) ---- 33, 37

National Labor Relations Board v. *Griswold Mfg. Co.*, 106 F. (2d) 713 (C. C. A. 3) ---- 33

National Labor Relations Board v. *Hearst*, 102 F. (2d) 658 (C. C. A. 9) ---- 41

National Labor Relations Board v. *Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4) ---- 76

National Labor Relations Board v. *International Brotherhood of Electrical Workers*, 308 U. S. 413 ---- 5

National Labor Relations Board v. *Lane Cotton Mills*, 111 F. (2d) 814 (C. C. A. 5) ---- 33

National Labor Relations Board v. *Louisville Refining Co.*, 102 F. (2d) 678 (C. C. A. 6), cert. denied, 308 U. S. 568 ---- 78

National Labor Relations Board v. *Lund*, 103 F. (2d) 815 (C. C. A. 8) ---- 44

National Labor Relations Board v. *Mathieson Alkali Works*, decided October 7, 1940 (C. C. A. 4) ---- 7, 35

National Labor Relations Board v. *National Motor Bearing Co.*, 105 F. (2d) 652 (C. C. A. 9) ---- 25, 44, 62

National Labor Relations Board v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241 ---- 69, 74

National Labor Relations Board v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272 ---- 67

National Labor Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261 ---- 45, 66, 67, 70, 71

National Labor Relations Board v. *Piqua Munising Wood Products Co.*, 109 F (2d) 552 (C. C. A. 6) ---- 44

National Labor Relations Board v. *Planters Mfg. Co.*, 105 F. (2d) 750 (C. C. A. 4) ---- 33

National Labor Relations Board v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2), cert. denied, 304 U. S. 576 ---- 78

National Labor Relations Board v. *Skinner & Kennedy Stationery Co.*, decided July 25, 1940 (C. C. A. 8) ---- 33

National Labor Relations Board v. *Somerset Shoe Co.*, 111 F. (2d) 681 (C. C. A. 1) ---- 78

National Labor Relations Board v. *Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9) ---- 33, 44, 78

Page

National Labor Relations Board v. *Swank Products, Inc.*, 108 F. (2d) 872 (C. C. A. 3) 34
National Labor Relations Board v. *Whittier Mills Co.*, 111 F. (2d) 474 (C. C. A. 5) 36, 44, 78
National Licorice Co. v. *National Labor Relations Board*, 309 U. S. 350 ..... 9, 11, 54, 62, 70
Pittsburgh Plate Glass Co. v. *National Labor Relations Board*, 113 F. (2d) 698 (C. C. A. 8) 44
M. H. Ritzwoller Co. v. *National Labor Relations Board*, decided May 8, 1940 (C. C. A. 7) 78
Stewart Die Casting Corp. v. *National Labor Relations Board*, decided July 3, 1940 (C. C. A. 7) 78
Swift & Co. v. *National Labor Relations Board*, 106 F. (2d) 87 (C. C. A. 10) 7, 25, 33, 37
Texas & New Orleans R. Co. v. *Brotherhood of Railway Clerks*, 281 U. S. 548 ..... 10, 11, 29, 66
U. S. Navigation Co. v. *Cunard S. S. Co.*, 284 U. S. 474 45
Virginia Ferry Corp. v. *National Labor Relations Board*, 101 F. (2d) 103 (C. C. A. 4) 8, 33, 41
Western Union Telegraph Co. v. *National Labor Relations Board*, decided August 9, 1940 (C. C. A. 2) 38
Westinghouse Electric & Manufacturing Co. v. *National Labor Relations Board*, 112 F. (2d) 657 (C. C. A. 2) 38

Statute:

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. Supp. V, Sec. 151 *et seq.*) 80

Miscellaneous:

Allen, *The Foreman and His Job* (1922) 31
Anderson, *Industrial Engineering and Factory Management* (1928) 30–31
Cohen, *"The Appropriate Unit" under the National Labor Relations Act*, 39 Columbia Law Review 1110 ..... 48, 49
Fourth Annual Report of the National Labor Relations Board (Govt. Print. Off., 1940) 52
Hepner, *Human Relations in Changing Industry* (1934) 32
House Report No. 1147 (74th Cong., 1st Sess.) 44, 67
King, *Industry and Humanity* (1935) 32
McMurray, *So You Handle People*, in *The Society for Advancement of Management Journal* (November 1937) 31
Machinists Monthly Journal (September 1937, October 1937, December 1937, September 1938) 58
Metropolitan Life Insurance Co., Policyholders Service Bureau, *Foreman Training Plans* (1929) 30
National Metal Trades Association; Committee on Industrial Education, *Foremanship: Presenting the Fundamental Principles of Practical Foremanship* (1928) 32
Proceedings of the 14th Convention of the International Association of Machinists (1911) 59

Miscellaneous—Continued. Page

Proceedings of the 15th Convention of the International Association of Machinists (1916) 59

Proceedings of the 16th Convention of the International Association of Machinists (1920) 59

Proceedings of the 19th Convention of the International Association of Machinists (1936) 59

Reitell, *How To Be A Good Foreman* (1927) 31

Scott, Clothier, and Mathewson, *Personnel Management: Principles, Practices, and Points of View* (1931) 30

Senate Report No. 573, 74th Cong., 1st Sess 13, 67

Slichter, *The Turnover of Factory Labor* (1919) 32

Tead & Metcalf, *Personnel Administration: Its Principles and Practice* (3rd ed., 1933) 30

Third Annual Report of the National Labor Relations Board (Govt. Print. Off., 1939) 46, 47, 48, 52

U. S. Department of Labor, Bureau of Labor Statistics. Bulletin No. 634, *Characteristics of Company Unions* (Govt. Print. Off., 1935) 32

Wharton, *Fifty Years of the Machinists Union*, in Labor Information Bulletin, U. S. Bureau of Labor Statistics. Vol. V, No. 5 (May 1938) 59

BLANK PAGE

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 16

INTERNATIONAL ASSOCIATION OF MACHINISTS; TOOL & DIE MAKERS LODGE NO. 35, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS; AND PRODUCTION LODGE NO. 1200, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS, PETITIONERS

v.

NATONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 371–405) is reported at 110 F. (2d) 29. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 324–366) are reported at 8 N. L. R. B. 621.

JURISDICTION

The decree of the court below (R. 405) was entered on November 20, 1939. The petition for a writ of certiorari was filed on February 17, 1940, and was granted on April 1, 1940, 309 U. S. 649 (R. 411). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether there is substantial evidence to support the Board's findings that the employer assisted the I. A. M. by unfair labor practices prior to entering into a closed-shop contract with it, so as to render the contract invalid under Section 8 (3) of the Act.

2. Whether, in the circumstances of this case, the Board acted within its discretion in finding that a unit comprising the employer's production employees, including those in the toolroom, was appropriate for collective bargaining purposes.

3. Whether, in the circumstances of this case, it was within the discretion of the Board, upon findings that the employer had refused to bargain collectively with the U. A. W., which had been designated by a majority of the employees in an appropriate unit, to require the employer to bargain with that organization, despite a claim, submitted

to the Board by the I. A. M. shortly before the Board issued its order, that the I. A. M. then had been designated by a majority of the employees in the unit.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set out in the Appendix.

STATEMENT

Upon the usual proceedings had pursuant to Section 10 of the National Labor Relations Act,[1] the Board issued its findings of fact, conclusions of law, and order (R. 324–366).

The findings of the Board with respect to the unfair labor practices and the appropriate unit are detailed under Point I of the Argument (*infra,* pp. 42–62). In brief outline, the Board found that the Serrick Corporation, herein called the Company, in violation of Section 8 (2) of the Act, had from December 1936 to September 16, 1937, dominated and interfered with the administration of, and had contributed support to, a labor organization of its employees known as the Acme Welfare Association

[1] These were: a charge and amended charge, filed by the United Automobile Workers of America, Local No. 459, affiliated with the C. I. O., herein called the U. A. W.; complaint; answer; hearing before a trial examiner, at which the International Association of Machinists, affiliated with the A. F. of L., herein called I. A. M., intervened; intermediate report of the trial examiner; and exceptions thereto by the U. A. W.

(R. 334); that thereafter the Company, by assisting the I. A. M. and opposing the U. A. W. and by other acts, had interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, in violation of Section 8 (1) of the Act (R. 346, 358–360); that the Company's discharge of 18 toolroom employees because of their failure to join the I. A. M. was in violation of Section 8 (3) of the Act, for the reason that the closed-shop contract with the I. A. M., pursuant to which the employees were discharged, was illegal under that section in that (a) it was made with a labor organization "assisted" by unfair labor practices, (b) the labor organization did not represent an uncoerced majority of the toolroom employees, and (c) the toolroom, the unit covered by the contract, was not, in the circumstances of this case, an appropriate unit for collective bargaining purposes (R. 346–347); and that at all times after August 10, 1937, the Company, contrary to Section 8 (5) of the Act, refused to bargain collectively with the U. A. W., although that organization had been designated by a majority of the Company's employees in an appropriate unit (R. 352–358).

Upon the basis of these findings, the order of the Board (R. 362–366) requires the Company to cease and desist (a) from giving effect to its closed-shop contract with the I. A. M., provided, however, that the Company is not precluded from hereafter entering into such a contract with the I. A. M. or any

other labor organization under conditions which satisfy the requirements of Section 8 (3); (b) from refusing to bargain collectively with the U. A. W. as the exclusive representative of its employees in the unit found by the Board to be appropriate; and (c) from its various other unfair labor practices, not here in issue. As affirmative action designed to effectuate the policies of the Act, the Board ordered the Company to reinstate with back pay the toolroom employees discriminatorily discharged and to post appropriate notices.[2]

The Company complied in full with the Board's order (R. 367–370). On September 29, 1938 petitioners herein filed in the court below a petition (R. 1–15) to review and set aside those portions of the order (R. 363) which require the Company to cease and desist from giving effect to its closed-shop con-

[2] Having found, as part of the case arising upon the charges filed under Section 10 (b) of the Act, that the U. A. W. was the accredited representative of the employees in an appropriate unit, it was unnecessary for the Board to act upon the petition which had been filed by the U. A. W. under Section 9 (c) of the Act for certification of representatives. The petition was, therefore, dismissed by the Board (R. 361). Petitioners erroneously characterize, and in some respects treat, the Board's findings and order in the proceeding under Section 10 (b) as a certification of the U. A. W. under Section 9 (c) (Pet. Br., pp. 6, 7, 8, 13, 41, 43, 44). This it clearly is not. Compare *National Labor Relations Board* v. *The Falk Corporation*, 308 U. S. 453; *National Labor Relations Board* v. *International Brotherhood of Electrical Workers et al.*, 308 U. S. 413; *American Federation of Labor et al.* v. *National Labor Relations Board*, 308 U. S. 401.

tract with the I. A. M. and from refusing to bargain collectively with the U. A. W. The Board answered, praying that the petition to review be denied (R. 16–18).

On November 20, 1939, the court below rendered its decision (R. 371–401) affirming the order of the Board, and entered a decree accordingly (R. 405). The effect of the decree is merely to deny the petition to review. The Board did not request enforcement against the Company nor was the Company made a party to the proceedings.

SUMMARY OF ARGUMENT

I

The closed-shop contract between the Company and the I. A. M. is invalid under Section 8 (3) of the Act. That section expressly limits permissible closed-shop contracts to those made between an employer and a labor organization which has not been established, maintained, or assisted by any unfair labor practice and which is the authorized representative of the employees in an appropriate collective-bargaining unit. The Board found that the I. A. M. was assisted by the Company's unfair labor practices, that the I. A. M. did not represent an uncoerced majority of the toolroom employees, and that the toolroom employees, the unit covered by the closed-shop contract, did not constitute an appropriate bargaining unit.

A. Subsidiary findings of the Board which petitioners do not challenge fully support the conclu-

sion that the I. A. M. was assisted by unfair labor practices. The management vigorously campaigned against the U. A. W. and made known that it would recognize the I. A. M. but not the U. A. W. The Company permitted the I. A. M. to use its premises as recruiting headquarters and aided in the membership campaign.

B. Additional assistance was rendered the I. A. M. by the Company through six employees, for whose activities petitioners deny that the Company is responsible under the Act. But the employees in question had been vested by the Company with authority over their fellows; this and other circumstances under which their activities were carried on were such as to lead the other employees reasonably to believe that the six were acting on behalf of the Company. The employer is therefore answerable for what they did. *Consumers Power Co.* v. *National Labor Relations Board,* 113 F. (2d) 38 (C. C. A. 6); *H. J. Heinz Co.* v. *National Labor Relations Board,* 110 F. (2d) 843 (C. C. A. 6); *National Labor Relations Board* v. *Mathieson Alkali Works, Inc.,* decided October 7, 1940 (C. C. A. 4); *National Labor Relations Board* v. *American Manufacturing Co.,* 106 F. (2d) 61 (C. C. A. 2), modified and affirmed, 309 U. S. 629; *Humble Oil & Refining Co.* v. *National Labor Relations Board,* 113 F. (2d) 85 (C. C. A. 5); *Swift & Co.* v. *National Labor Relations Board,* 106 F. (2d) 87 (C. C. A. 10). The mere fact that the six employees were members of the I. A. M. does

not of itself divest the employer of responsibility for their actions. *Virginia Ferry Corp.* v. *National Labor Relations Board,* 101 F. (2d) 103 (C. C. A. 4).

C. The I. A. M. had not, at the time of the execution of the contract, been freely designated as their representative by a majority of the toolroom employees, since its membership was attributable to the Company's unfair labor practices. The I. A. M. therefore lacked authority under the Act to enter into the contract.

D. In any event, the toolroom employees, the unit covered by the closed-shop contract, did not constitute an appropriate bargaining unit. The Board's finding that the appropriate unit consisted of all the production employees, including the toolroom employees, is plainly reasonable in the circumstances of this case. To resolve the conflict between craft and plant units frequently arising in the administration of the Act, the Board has devised the so-called Globe Doctrine, upon which petitioners rely. Under this doctrine the Board has ordinarily given effect to the free desire of a majority of the employees in the less inclusive unit over that of a majority of all the employees. But in order to justify this, the choice by the smaller majority to segregate itself from the others must be a free choice. In the present case there was no free expression of desire by a majority of the toolroom employees for a craft unit. The Globe Doc-

trine, therefore, does not apply, and petitioners' present reliance upon it is unsound. Petitioners also err in asserting that the toolroom employees necessarily, and as a matter of law, constitute an appropriate unit: the most that can be said is that they constitute a group which might have been set aside as a separate unit if a majority of them had freely expressed a desire to that end. Nor may petitioners validly claim that the Board should have held an election to determine whether such a desire was entertained: the issue before the Board was whether the U. A. W. was the authorized representative of the employees in an appropriate unit at the time of the Company's refusal to bargain. An election held at the time the case was before the Board for decision could not resolve that issue.

Further, a majority of the Board found that since the I. A. M. was, like the U. A. W., in reality organizing on a plant-wide basis, it could not maintain that the craft unit was appropriate. This method of organizing by the I. A. M. casts further doubt upon the soundness of the assertion that membership in the I. A. M. reflected a desire by the toolroom employees for a craft unit.

E. Continued compliance with the contract would constitute a continuing violation of Section 8 (3). The Board's order requiring the Company to cease giving effect to the contract is, therefore, plainly valid. *National Licorice Co.* v. *National Labor Relations Board,* 309 U. S. 350; *Consolidated*

Edison Co. v. *National Labor Relations Board,* 305 U. S. 197, 236.

II

The order requiring the Company to bargain collectively with the U. A. W. is an appropriate remedy for the refusal to bargain, and the Board properly disregarded petitioners' belated assertion that after the refusal to bargain it had become the majority representative. The Company's unfair labor practices could not operate to change the employees' representative. *National Labor Relations Board* v. *Bradford Dyeing Association,* 310 U. S. 318. The effect of an illegal refusal to bargain is to drive employees away from their chosen representative and to create a continuing obstacle to their free choice. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.,* 303 U. S. 261; *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. The only effective means of correcting this result is to require a grant of the withheld recognition. Further, the decisions giving weight to assertions of loss of majority after the refusal to bargain but before such refusal has been remedied (*National Labor Relations Board* v. *National Licorice Co.,* 104 F. (2d) 655 (C. C. A. 2); *National Labor Relations Board* v. *American Manufacturing Co.,* 106 F. (2d) 61 (C. C. A. 2); *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board,* 104 F. (2d) 49 (C. C. A. 8)) prevent effective enforcement of Sec-

tion 8 (5) by necessitating successive inquiries into such claims, which may indefinitely delay the bargaining order. Petitioners' suggestion that in such circumstances the Board should withhold the normal bargaining order and direct an election is impracticable and would convert a proceeding designed to halt and remedy a refusal to bargain into a representation proceeding for the certification of representatives.

It is not true that the bargaining order may saddle upon the employees a representative not wanted by a majority. The U. A. W. had a free majority at the time of the refusal to bargain and of the hearing; at the time the Board's order issued it would have been impossible to determine whether the employees' free choice had changed because freedom of choice had not been restored in the plant. After dissipation of the effects of the unfair labor practices, however, Section 9 of the Act affords a ready means for determination of representatives upon petition by the employees or by any labor organization in their behalf. Petitioners could long since have pursued their remedies under that section. Instead they have chosen to insist that the new question of representation must be determined before the unfair labor practices have been effectively remedied; we submit, on the contrary, that that question must wait until conditions permitting a free choice have been reestablished by remedying the violations of the Act. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548.

269393—40——2

The Board's position concerning the irrelevance of asserted changes of majority alleged to have occurred before the unfair labor practices have been remedied has been approved by the Circuit Courts of Appeals for the First, Fourth, Seventh, Eighth, and Tenth Circuits.

ARGUMENT

I

THE CLOSED-SHOP CONTRACT BETWEEN THE COMPANY AND THE I. A. M. IS INVALID UNDER SECTION 8 (3) OF THE ACT

Section 8 (3) of the Act renders invalid a closed-shop contract—which *ipso facto* requires discrimination upon the basis of union membership—except when the conditions enumerated in the proviso to the section are satisfied. The proviso is as follows:

> *Provided*, That nothing in this Act * * * shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.[3]

[3] The Senate Committee on Education and Labor pointed out, concerning this provision: "* * * the bill is ex-

The Board found in the present case that the closed-shop contract executed by the Company with the I. A. M. was invalid because (1) the Company's unfair labor practices assisted the I. A. M. in obtaining its membership among the employees (R. 360; see R. 346); (2) the I. A. M. did not represent an uncoerced majority of the toolroom employees at the time the contract was executed (R. 346); and (3) the toolroom employees, the unit covered by the contract, did not constitute an appropriate bargaining unit (R. 346–347).

A

THE BOARD'S FINDINGS THAT THE EMPLOYER ASSISTED THE I. A. M. BY UNFAIR LABOR PRACTICES ARE SUSTAINED BY SUBSIDIARY FINDINGS NOT CHALLENGED BY PETITIONERS

Petitioners have stipulated to the correctness of all the Board's findings except those relating to the supervisory status of four named toolroom employees active in the I. A. M. campaign during the period immediately preceding the execution of the toolroom contract [4] and those relating to the appro-

---

tremely careful to forestall the making of closed-shop agreements with organizations that have been 'established, maintained, or assisted' by any action defined in the bill as an unfair labor practice" (Senate Report No. 573, 74th Cong., 1st Sess., p. 12).

[4] The Board found that these four employees, Fouts, Shock, Bolander, and Dininger were supervisory employees (R. 338–341). Two other employees active in the I. A. M. campaign, Byroad and Baker, were not found to have such

priateness of a unit embracing both toolroom and production employees (R. 406–408). The findings to which petitioners have stipulated fully support the Board's order. Petitioners' attack upon the supervisory status of the toolroom employees and the appropriateness of the bargaining unit reaches only a small segment of the pertinent findings; as the court below said (R. 379): "The toolroom episode was merely one phase of a plant-wide controversy lasting from May to October" and the events in the toolroom were but "integral parts" of "the general contemporaneous current." A chronological statement of the facts will demonstrate that the Board's order is fully supported, without regard to the validity of petitioner's limited challenge.[5]

The Acme Welfare Association, an "inside" employees' labor organization established in 1934 by the Company's predecessor, was maintained by the Company in its plant until the U. A. W. began or-

---

status, but the court below held the Company responsible for their coercive and interfering activities on the ground that they acted on behalf of the Company (R. 389, 392–395).

[5] While the stipulation excepts the supervisory status of the six toolroom employees, the findings of the Board and the statements of the court below concerning the conduct of these employees and their relationship to the Company are otherwise agreed to be supported by the evidence (R. 407). The Company's responsibility for the activities of these employees is discussed at pages 26–41, *infra*.

ganizing in May 1937 (R. 331–332, 375–376).[6] The Company's personnel director, Lewis, was president of the Association and directed a vigorous campaign to enlist all employees in it and to keep them out of the U. A. W. (R. 331–332, 376, 381–382). Company executives, including Murphy, vice president and general manager, Poole, works manager, Stillwagon, plant superintendent, and Lewis, intervened publicly at meetings of the Acme Welfare Association and privately, urging employees into the Association and warning, threatening, and discharging them for leading or even joining the U. A. W. (R. 332–333, 336–382). Lewis advised the governing committee of the Association that the U. A. W. meetings were under surveillance by the Company (R. 336, 386, 392). Five U. A. W. officials, including its president and vice president, were discharged by the Company during the week of June 17 to 25, 1937, because of their union activities (R. 336–337, 347–348, 382).

Particular emphasis in this campaign was placed upon the toolroom (R. 333, 338, 382). Lewis assigned to Sharpe, Association committeeman for the toolroom, the task of persuading the employees there to join the Association (R. 333, 338, 382); in

[6] In view of the stipulation as to the correctness of the findings made by the Board and the court below, the printed record does not in most instances contain the evidence which supports these findings. Therefore citations here made are to the findings of the Board and the opinion of the court below, except where the supporting evidence has been printed.

this effort Sharpe was abetted by McCoy, the toolroom foreman (R. 29–31, 338, 390). *Fouts, Shock, Byroad,* and *Bolander*[7] engaged in widespread solicitation in the toolroom on behalf of the Association during working hours, either calling the employees to the foreman's desk to sign membership cards or approaching them at their benches (R. 22, 30–31, 35, 36, 43–44, 51, 54–55, 333, 340).

However, despite the Company's efforts to build it into an effective instrument to block the U. A. W., the Association failed to obtain acceptance by the employees (R. 338). With the decline of the Association by mid-July, the word went around that the management would not recognize the U. A. W. as the employees' representative and that it favored the I. A. M. (R. 338). General Manager Murphy told *Shock* that he would close the plant before he would deal with the U. A. W. (R. 338–339). Superintendent Shimer and *Shock* each reported to the toolroom employees that the Company would not recognize the C. I. O. but would recognize an A. F. of L. union (R. 31, 34, 42, 90–91, 338–339, 387, 388).

On July 26, the same day on which Shimer made these assertions, he further stated that "the foremen don't like the C. I. O.," that there was "going to be quite a lay-off" and that C. I. O. members would be the first to go (R. 41, 388). These pre-

[7] For the convenience of the Court, the names of the six employees for whose conduct petitioners contend the employer is not responsible are italicized in the immediately succeeding pages.

dictions were subsequently borne out (R. 388–389). *Fouts, Shock,* and *Bolander,* who had been extremely active on behalf of the Association (*supra,* p. 16), took the initiative in introducing the I. A. M. into the plant. Under the direction of *Fouts* and *Shock, Byroad* conducted a "straw vote" among the employees during working hours (R. 339, 383, 392). Although *Byroad* did not question all three shifts, it was announced that 80 percent of the employees favored the A. F. of L. (R. 339, 383, 392). Again acting at the direction of *Fouts* and *Shock, Byroad,* during working hours, left the plant and sought out an I. A. M. organizer (R. 122, 340, 392). *Fouts* advised toolroom employees that "he had attempted to contact and did contact an A. F. of L. organizer who would come from Indianapolis and would help them organize a local in Muncie" (R. 23, 340). On the night of July 28, the I. A. M. organizer held an organization meeting; 34 of the 63 toolroom employees signed I. A. M. application cards (R. 340). Included among the 34 were *Fouts, Shock, Bolander, Dininger, Byroad,* and *Baker* (R. 173–174, 383).

From July 26 to August 10 a vigorous organizational campaign was conducted on behalf of the I. A. M. (R. 340, 389–394). *Fouts* solicited workman after workman in the toolroom to join that union, stating that the purpose was to "abolish the C. I. O. organization in the shop," to "beat" the U. A. W. (R. 22–23, 31, 36, 45, 340, 390–391). Stev-

enson, a toolroom employee who had been solicited shortly theretofore by *Fouts* "to get into the company union just to beat the C. I. O." was again solicited by *Fouts,* this time "to join the A. F. of L. for the same reason, just to beat the C. I. O." (R. 52, 340–341, 390). *Fouts* also told Stevenson that if he joined the I. A. M. but "did not want to stay, that would be all right, just as long as they got in enough to beat them [U. A. W.] out" (R. 54, 341). *Fouts* threatened one employee with discharge if he did not join the I. A. M. (R. 45, 340, 390).

Shock engaged in similar activity on behalf of the I. A. M. (R. 45, 340, 383, 390). Indeed, for a week preceding the Company's execution of the closed-shop contract with the I. A. M. on August 11 "practically all" that *Shock* did "was go from one bench to another soliciting" (R. 57, 392). *Dininger* offered one employee a higher efficiency rating if he would join the I. A. M. (R. 42, 341, 393). During the latter part of July or the first week in August, *Bolander* permitted, in his presence and during working hours, the use of his desk by an I. A. M. committeeman for the purpose of having I. A. M. application cards signed by the employees (R. 53, 341, 393).

The Company's higher officials knew of, and participated in, these activities. On August 6, Personnel Director Lewis advised two of the toolroom employees, while they were at work, to "join the A. F. of L." in order "to have one organization

in the toolroom" (R. 25, 28–29, 33, 341, 381). When, following the execution of the closed-shop contract, one of the toolmen pointed out to Personnel Director Lewis that "a lot of pressure" had been put on the men and that their jobs had been "threatened," Lewis, far from denying the accusation, replied the toolmen had acted "like a bunch of schoolboys" (R. 25). McCoy, foreman in charge of the toolroom, was present during open solicitation by various employees and admittedly knew what was going on (R. 19–20, 22–23, 46, 53, 341–342, 390). *Byroad* spent 75 or 80 percent of his time soliciting for the I. A. M. in the toolroom during working hours (R. 19–20, 26, 35, 55); his activities included threats of loss of employment for those who did not sign up (R. 21), cursing employees who did not do so (R. 47–48), and telling others "Mac [McCoy] knows what I am doing. Mac is an old A. F. L. man himself. He wants us to get in the A. F. L., but don't want us to have anything to do with the C. I. O." (R. 33, 92, 392). *Baker* likewise repeatedly solicited in the toolroom during working hours (R. 24, 26, 31, 34). In contrast to the freedom allowed I. A. M. activities on company time and property was the sharp order given by Plant Manager Westlund to several employees belonging to the U. A. W. to "check out their time" when they tarried in returning from a conference with the management about the U. A. W. (R. 77–78, 117; see also R. 26).

At conferences with the management on August 3, the I. A. M. presented a contract covering the toolroom employees and containing, among others, a closed-shop provision; *Shock,* as spokesman for the I. A. M., advised General Manager Murphy that the purpose of the contract was to "keep the C. I. O. out of the toolroom" and that "after the trouble was settled" the Company "could tear up the contract" (R. 343-344, 383). The contract was executed on August 11 but was dated back to August 6 (R. 345). As of the date of execution, 35 of the 63 toolmen were members of the I. A. M., 19 of the U. A. W., and 2 had signed cards in both organizations (R. 173–175). On August 13 all toolroom employees who declined to apply for I. A. M. membership, more than 20 in number, were discharged (R. 173–175, 345, 384).

On August 10 and thereafter, the Company refused to bargain with the U. A. W. although that organization had been designated by a majority of the production and toolroom employees (R. 352–358, 384–385). The Company distributed to the employees a circular taking note of a feeling of dissatisfaction and unrest, attributing this to "outsiders," hinting that the plant might be closed, urging the employees not to be fooled by the "promises" of "strangers," and declaring the Company's intention not to deal with "irresponsible organizations" (R. 353–354, 384). Simultaneously, the I. A. M. began a campaign, assisted

by the Company's staff, to organize the production employees (R. 157, 389–390). The weapon of discriminatory discharge was used (R. 349).

This statement, in broad outline, of the occurrences in the Company's plant, indicates the extent of employer aid to the I. A. M. through interference, intimidation, coercion, and discriminatory discharges, both in the toolroom and throughout the plant. As the court below stated, the Company evinced a "determined purpose, never relaxed, to have nothing to do with the U. A. W. and to use the I. A. M. to keep U. A. W. out of the toolroom and the plant" (R. 386).

The Board's determination that the closed-shop contract between the Company and the I. A. M. was invalid under Section 8 (3), is thus supported by many unchallenged subsidiary findings of assistance to the I. A. M. prior to execution of the contract, irrespective of the validity of petitioner's claim that the six toolroom employees were not "supervisors." Coercive statements, employer promotion of a company union, and discriminatory discharges, made it abundantly clear, before the I. A. M.'s appearance on the scene, that the employees were not free to select the U. A. W. as their bargaining representative. While thus discouraging U. A. W. activity, the Company advanced the cause of the I. A. M. by making known, prior to affiliation of any of the employees with the I. A. M., that the Company would recognize the A. F. of L.

but not the C. I. O. The Company's premises were turned over to the I. A. M. for use as a recruiting headquarters; the personnel director "advised" employees to join the I. A. M.; and the organization which the Company foisted upon the employees was ultimately recognized, while recognition was refused the U. A. W.

Petitioners urge that unfair labor practices against the U. A. W. do not constitute "assistance" to the I. A. M. (Br. pp. 22–25). The evidence we have reviewed shows much more than anti-U. A. W. interference. Even such interference, however, is relevant and important; as the court below repeatedly stated (R. 379, 380, 396), the various unfair labor practices cannot be viewed in isolation from the whole course of events at the plant during the months immediately preceding the execution of the closed-shop contract. The measures taken in opposition to the U. A. W. were coupled, prior to the contract, with the statement by Superintendent Shimer that the company would recognize the A. F. of L., Personnel Director Lewis' "advice" to join the A. F. of L., and the unlimited freedom accorded to I. A. M. organizers in using company time and property. In combination, substantial "assistance" is plainly shown. Intense opposition to one organization, including the discharge of its leaders, enables an employer to herd employees into a favored rival union; fear of discharge unless the employer is satisfied that they are in the "right"

camp plainly leads employees to align themselves with the favored group.

Here the Company's employees had been desirous of obtaining the advantages of collective bargaining and organization. Their first efforts in this direction were met by a vigorous campaign to discourage membership in the U. A. W. and to force acceptance of the company-dominated Association. When the Company's campaign on behalf of the Association failed to destroy the U. A. W., the leaders of the latter organization were discharged. Admittedly, the Company repeatedly informed the employees that it would not recognize or deal with the C. I. O. and, prior to any employee's affiliation with the I. A. M., made it forcefully manifest that it was the I. A. M. or no representation for collective bargaining. Under these circumstances the evidence fully warrants the Board's finding that the Company "coerced and induced its toolroom employees to establish the I. A. M. local by clear indications of uncompromising hostility to the U. A. W. and friendliness for the I. A. M., by assisting in the enlistment of the I. A. M. membership, and by concluding a closed-shop contract with that organization when the U. A. W. had requested an exclusive bargaining contract covering all the production employees in the plant, including toolroom employees" (R. 346), as well as the further findings that the I. A. M. was

assisted by the Company and did not represent an uncoerced majority of the toolroom employees (R. 346–347).[8]

Petitioners contend further that there were no subsequent unfair labor practices which enabled the I. A. M. to *retain* its majority, that there is no evidence to support such an inference, and that the Board made no such finding (Br. p. 25). The Board found that "inasmuch as the membership of the I. A. M. must be deemed vitiated by the interference of the [Company] in the solicitation of such membership, the I. A. M. did not represent an uncoerced majority of the toolroom employees at the time of the execution of the closed-shop contract" (R. 346). This finding is ample. When extensive and intense unfair labor practices are

[8] Petitioners' assertion that "there is no finding by the Board that there were any unfair practices of any kind on the part of the employer assisting the I. A. M. prior to the time the I. A. M. had obtained a majority membership on July 28, 1937" (Pet. Br., p. 25), is inaccurate. As the above quotation from the Board's findings indicates, the Board determined that the Company "coerced and induced its toolroom employees to establish the I. A. M. local" (R. 346). The unfair practices occurred in large measure prior to July 28—the attempt to foist the Association on the employees; the discharges of U. A. W. leaders; the announcements that the Company would not recognize the U. A. W. but would recognize the A. F. of L.; Superintendent Shimer's representations to employees of the toolroom on July 26 that C. I. O. men would be laid off and that the Company would never accept the C. I. O. but would willingly deal with the A. F. of L.—had all occurred before any employee of the Company joined the A. F. of L.

found, it is a fair inference from the findings that both the acquisition of a majority by the assisted union and the retention thereof resulted from the unfair labor practices. The finding that on August 11 the I. A. M. did not represent an uncoerced majority is an accurate summary of the effects of the unfair labor practices.

The employer conduct found in this case differs in no significant respect from that in other cases where findings that employee freedom of choice was destroyed have been approved by the courts.[9] Petitioners' challenge to the efficacy of such unfair labor practices to deny freedom of choice goes to the very basis of the Act. What petitioners really request is an exception, in their case, to the usual inference: they have conceded that the Company's activities on behalf of the Association—differing neither in kind nor degree from the Company's subsequent activity on behalf of the I. A. M.—precluded freedom of choice (R. 407, 332–334, 361). The distinction appears to rest entirely upon the nature of the organization favored by the employer. The Act recognizes no such dis-

[9] *E. g., National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 250, 262; *National Labor Relations Board* v. *Bradford Dyeing Association (U. S. A.)*, 310 U. S. 318; *National Labor Relations Board* v. *The Falk Corporation*, 308 U. S. 453; *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8); *National Motor Bearing Co.* v. *National Labor Relations Board*, 105 F. (2d) 652 (C. C. A. 9); *Swift & Co.* v. *National Labor Relations Board*, 106 F. (2d) 87 (C. C. A. 10).

tinction. *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197. As the Board found, and the court below agreed (R. 346, 394, 399–400), the coercion and interference which made up the Company's assistance to the I. A. M. prevented that organization's designation by the employees from constituting the free designation which the Act requires.

B

THE COMPANY WAS PROPERLY HELD RESPONSIBLE FOR THE ACTIVITIES OF THE SIX EMPLOYEES WHOSE "SUPERVISORY" STATUS IS CHALLENGED BY PETITIONERS

In addition to those acts of assistance, described above, for which petitioners concede that the Company was responsible, the activities of Fouts, Shock, Bolander, Dininger, Byroad, and Baker further support the Board's findings of employer assistance to the I. A. M. As we have stated (note 4, pp. 13–14, *supra*), the Board found that the Company was answerable for the conduct engaged in by the four first named above, and the court below held that, in assisting the I. A. M., Byroad and Baker likewise acted on behalf of the Company. In demonstrating the correctness of these holdings, we shall first briefly review the authority of the employees in question and shall then discuss the principles which, we believe, should control determination of employer responsibility under the Act for activities of employees.

Fouts, Shock, Bolander, and Dininger each directed groups of machinists in their work (R. 23,

40, 43, 44). Fouts was in charge of the "roll department," had authority to determine whether or not the men under him were suitable for a particular job, and was regarded by the employees under him as a "boss" or "assistant foreman" (R. 23–24, 30, 44, 54). Shock was in charge of the entire toolroom during the absence of Foreman McCoy during the day shift (R. 34, 44, 45). It was Shock who instructed Byroad to inform the employees during working hours of the execution of the closed-shop contract with the I. A. M. (R. 126). Dininger and Bolander were referred to in the testimony as "foremen" (R. 40, 42, 43), and McCoy testified that they were in charge of the second and third shifts, respectively, which worked at night; McCoy worked only during the day (R. 114–115). According to McCoy, Dininger had the power to "lay off" men, though apparently not to discharge them (R. 111). Personnel Director Lewis testified that Dininger and Bolander had the power to recommend employees for hire and discharge (R. 77). As the court below pointed out, "McCoy himself had little, if any, further power. According to all the evidence, 'hiring and firing' was the function primarily of Lewis, more rarely of his superiors. A suggestion for employment or discharge by foremen and subforemen so closely connected with management is as potent, practically, as the power to 'hire and fire' " (R. 395).

We do not think that the question may be accurately phrased, as petitioners phrase it, in terms of whether Fouts, Shock, Bolander, and Dininger

were "supervisory" employees (Br. 14, *et seq.*). Whether an employer is answerable for acts of coercion and interference by his employees should not be determined by whether the employees may be labelled as "supervisory."[10] The proper test of employer responsibility is whether the employer has fulfilled his affirmative obligation to prevent use of his economic power over the employees in such manner as to interfere with their free exercise of the rights guaranteed by the Act. The controlling consideration is not any moral culpability on the part of the "employer"—or, in modern industry, on the part of any executive cog in an impersonal corporate setup—but the fact that the employees have been subjected to compulsions based upon the employer's economic power. The

[10] For this reason we do not, as does petitioner (Br. 18–19), regard the stipulation (R. 169–177) entered into at the hearing setting forth the names of all employees except "supervisory employees" and certain others, and containing the names of Fouts, Shock, Bolander, and Dininger, as determinative upon the question whether the company is answerable for the activities of these four. The stipulation shows on its face that its purpose was to list the employees according to their classification by the company on its pay roll (R. 169). The stipulation did not preclude the Board from proving at the hearing, in accordance with the principles for which we contend (*infra*, pp. 28–41), that the authority of certain of the employees enumerated in the stipulation and the circumstances under which they acted were such as to make the company responsible for their acts of interference and coercion. The interpretation which petitioner now seeks to place upon the stipulation was strongly urged in the court below; the court held that the four employees here in question "had actual, though not officially, nominal, supervisory capacity" (R. 394).

Board's obligation and function under the Act is to free employees in the future from the restraints which destroy freedom of self-organization; the concept of moral culpability on the part of the employer, which underlies any test based upon the presence or absence of express or implied "authorization," cannot limit exercise of the Board's power and duty to remove restraints which have been in fact imposed. See pages 34–35, *infra*.

Plainly, the fact that the actor has been vested by the employer with authority over other employees is a significant circumstance in determining whether the employees could reasonably regard his actions as those of the employer. The Act proscribes interference by employers because their "suggestions" and "advice" are backed by economic control over the employee's livelihood. By selecting an employee from among his fellows and vesting him with *indicia* of authority over them, the employer, in greater or less degree according to the authority conferred, lends his own prestige to the employee's actions in the eyes of the employees as a whole and strongly suggests that his power stands behind the employee's actions. The authority to hire or discharge, or to recommend such action, serves as an unequivocal hallmark of management representation, since it constitutes an actual investiture of capacity to exercise, or to bring about an exercise of, the employer's power in its most extreme form. Other powers are less plainly insignia of managerial status; but alone, or in combination, they may create the rea-

sonable impression which is the source of the employer's responsibility.

In modern industry the employer necessarily vests in a number of employees the power to direct and regulate the work of their fellows, that is, to give orders which are binding under plant discipline. Authorities in the fields of labor relations and economics are agreed that, to the employee, who rarely, if ever, comes into contact with higher officials in a large plant, his immediate "boss"—whether he be called "foreman," "supervisor," "straw boss," or "group leader"—represents the management's views and is the means whereby employee opinion can be molded in accordance with those views. "He is the interpreter of the management to the men as well as being the director of production itself." [11] As the means through which tangible contact is made, he "*is* the company." [12]

---

[11] Metropolitan Life Insurance Co., Policyholders' Service Bureau, *Foreman Training Plans* (1929), p. 5. See also Scott, Clothier, and Mathewson, *Personnel Management: Principles, Practices, and Points of View* (1931), pp. 43–44:

"The reason the foreman is the key man is this: regardless of what the administrative policies of the company may be, regardless of the extent to which the foreman properly interprets those policies, the man on the job looks up to him as the *management*. In the mind of the worker, management is fair or unfair in the degree in which his foreman is fair or unfair; intelligent or stupid as the foreman himself is intelligent or stupid; helpful and friendly as the foreman himself is helpful and friendly. The foreman has it in his power thus to modify the company's attitude toward its workers and, consequently, to formulate the workers' attitude toward the company."

[12] Tead and Metcalf, *Personnel Administration: Its Principles and Practice* (3rd ed., 1933), p. 151. See also Ander-

Employe-employer relations at the strawboss and foreman level must be watched carefully by management, for at that level human relations are almost inseparable from the job. It is through the immediate superior at that level that contact is established between the workman and management. It is at that point of contact that actual experiences and impressions occur. It is necessary therefore to train executives of this first outpost of management in the fundamentals of good industrial relations policies and practices, for they occupy the diplomatic post of management and, as such, are the moulders of worker opinion.[13]

---

son, *Industrial Engineering and Factory Management* (1928), p. 39: "At the furthest outpost of management, he *is* management to the workers."

[13] McMurry, *So You Handle People*, in *The Society for Advancement of Management Journal* (Nov. 1937), p. 168. See also Watkins and Dodd, *The Management of Labor Relations* (1938), pp. 436–437:

"The workers look upon him as the official representative of the company, and frequently he is the only representative with whom they ever come in touch. It is natural, therefore, that his words, actions, attitude, and methods should be accepted and interpreted by them as reflecting the established policies and practices of the firm. This may or may not be the case, but the fact that the workers believe it to be so is sufficient to cause misunderstanding."

In Reitell, *How to be a Good Foreman* (1927), p. 5, it is said of this type of employee: "* * * they are right up in the firing line, carrying to every worker the spirit and the underlying policy of the concern." Concerning the tendency of ordinary employees to follow an immediate leader's example, see Allen, *The Foreman and His Job* (1922), pp. 7–8.

By reason of this strategic location, the employee vested with authority can with facility exercise the employer's directive and disciplinary power so as to give sanction to the policies and desires which he voices. Petty discriminations, each too slight to admit of successful appeal, may readily visit serious discomfort upon opponents.[14] Consequently, the employees tend to "pattern their ideas after his, either because they respect him as a leader or because they wish to keep in his good graces."[15] The ultimate responsibility is the employer's; he has clothed the "supervisor" with power to inflict hardship and has therefore lent to his hints and suggestions an implied threat of oppression.[16]

The Circuit Courts of Appeals have repeatedly held that under the Act an employer may be held responsible for the activities of employees in whom he has vested authority over others, regardless of

---

[14] Slichter, *The Turnover of Factory Labor* (1919), p. 390. The worker in modern industrial society has been said to live under "the many fears incidental to tyrannical and capricious behavior on the part of those in authority, and especially of subordinate officials toward workers under their direction * * *." W. L. MacKenzie King, *Industry and Humanity* (1935), pp. 129–130. "* * * he is always somewhat at the mercy of a more or less whimsical supervisor." Hepner, *Human Relations in Changing Industry* (1934), p. 124.

[15] National Metal Trades Ass'n, Committee on Industrial Education, *Foremanship; Presenting the Fundamental Principles of Practical Foremanship* (1928), pp. 3–4.

[16] Compare U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 634, *Characteristics of Company Unions* (Govt. Print. Off., 1935), pp. 8–9.

whether he has "authorized" those activities.[17] In opinions expressing the *ratio decidendi* of such holdings the controlling consideration has been whether the actor's authority and responsibilities, or other circumstances surrounding his actions, were such as might induce a reasonable belief on the part of the employees that he spoke for the employer. In *Consumers Power Co.* v. *National Labor Relations Board,* 113 F. (2d) 38, the Circuit Court of Appeals for the Sixth Circuit said (at p. 44):

---

[17] *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61, 64, 67 (C. C. A. 2); *National Labor Relations Board* v. *Griswold Mfg. Co.*, 106 F. (2d) 713, 721–722 (C. C. A. 3); *National Labor Relations Board* v. *A. S. Abell Co.*, 97 F. (2d) 951, 956 (C. C. A. 4); *Virginia Ferry Corp.* v. *National Labor Relations Board*, 101 F. (2d) 103, 106 (C. C. A. 4); *National Labor Relations Board* v. *Planters Mfg. Co.*, 105 F. (2d) 750, 754 (C. C. A. 4); *National Labor Relations Board* v. *Brown Paper Mill Co.*, 108 F. (2d) 867 (C. C. A. 5); *National Labor Relations Board* v. *Lane Cotton Mills*, 111 F. (2d) 814, 816 (C. C. A. 5); *H. J. Heinz Co.* v. *National Labor Relations Board*, 110 F. (2d) 843, 847 (C. C. A. 6); *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. (2d) 38, 44 (C. C. A. 6); *National Labor Relations Board* v. *Colten et al.*, 105 F. (2d) 179, 181 (C. C. A. 6); *National Labor Relations Board* v. *Ford Motor Co.*, decided October 8, 1940 (C. C. A. 6); *National Labor Relations Board* v. *Skinner & Kennedy Stationery Co.*, decided July 25, 1940 (C. C. A. 8); *National Labor Relations Board* v. *Christian Board of Publication*, decided July 25, 1940 (C. C. A. 8); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 786, 792 (C. C. A. 9); *Swift & Co.* v. *National Labor Relations Board*, 106 F. (2d) 87, 93 (C. C. A. 10). But *cf. Ballston-Stillwater Knitting Co.* v. *National Labor*

The contention that the several anti-union acts of Markle, and other supervisors, amounting to intimidation, were not authorized and were beyond the scope of authority entrusted to these men, must be rejected, not necessarily upon a strict application of the doctrine of *respondeat superior* as it has been applied in private controversies arising out of tort or contract. It has repeatedly been noted that the National Labor Relations Act contemplates the protection of the public rights which it creates and defines, and that its power to command affirmative action is remedial and not punitive. * * *

It would seem to us, in view of the public rights involved and the remedial nature of the proceeding designed for their preservation and protection, that acts of coercion and intimidation by supervisory employees may be restrained and their resumption interdicted by appropriate action of the Board, even in the absence of clear demonstration of prior authorization or subsequent ratification, at least where the circumstances are such as to induce in subordinate employees a reasonable apprehension that the acts condemned reflect the policy of the

---

Relations Board, 98 F. (2d) 758, 762 (C. C. A. 2); *National Labor Relations Board* v. *Swank Products, Inc.*, 108 F. (2d) 872, 875 (C. C. A. 3); *Link-Belt Co.* v. *National Labor Relations Board*, 110 F. (2d) 506, 511 (C. C. A. 7), certiorari granted, October 14, 1940, Nos. 235, 236, this Term; *Cupples Co., Mfrs.*, v. *National Labor Relations Board*, 106 F. (2d) 100, 115 (C. C. A. 8); *Kansas City Power & Light Co.* v. *National Labor Relations Board*, 111 F. (2d) 340, 351 (C. C. A. 8).

> employer. The right freely to organize without coercion or intimidation, is an empty one unless there is authority under the statutory scheme to safeguard it, and the necessity for doing so calls for more appropriate action by the employer than mere declarations of neutrality and impartiality, even though in good faith proclaimed. Further than that we need not go for purposes of present decision.

In *H. J. Heinz Co.* v. *National Labor Relations Board*, 110 F. (2d) 843 (C. C. A. 6, pending argument, No. 73, this Term), the same court noted that the company, although its supervisory staff was engaging in widespread activity against the "outside" union and in favor of the "inside" organization, took no steps to disclaim their activity or to proclaim to the employees the management's neutrality. The court concluded that (at p. 847):

> There was abundant evidence that the ordinary employees feared the disfavor of those from whom they were accustomed to taking orders. Since they were justified in believing that these supervisory employees were acting as petitioner's representatives, petitioner is responsible for what they did.

In *National Labor Relations Board* v. *Mathieson Alkali Works, Inc., decided* October 7, 1940 (C. C. A. 4), the court stated the controlling principles as follows:

> Even if the supervisory position of the employee is of minor character, the employer may be held responsible for his conduct if

> the surrounding circumstances are such as reasonably to justify the inference that it is an expression of the employer's policy or is approved by the employer.

Similarly, in *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61 (C. C. A. 2), modified and affirmed, 309 U. S. 629, the court held that the controlling facts bearing upon employer responsibility were that the employees involved "transmitted * * * orders to the men" and that, while they did not in fact have the power to discharge, "the men believed they had it and regarded them as foremen" (106 F. (2d), at 64). And in *Humble Oil & Refining Co.* v. *National Labor Relations Board*, 113 F. (2d) 85 (C. C. A. 5), the court emphasized that an employee vested by the employer with authority over the other employees "appeared to be speaking in the exercise of his authority," even though in fact acting in violation of unpublicized instructions (113 F. (2d), at 92).[18] The Circuit Court of Appeals for the Tenth Circuit has agreed that instructions issued

[18] In *National Labor Relations Board* v. *Whittier Mills Co.*, 111 F. (2d) 474, the Circuit Court of Appeals for the Fifth Circuit stated that the circumstances surrounding the "supervisor's" utterances would warrant a finding of employer coercion if they disclosed "some encouragement or ratification or such repetition as to justify the inference of a policy which they express" (111 F. (2d), at 479). The court went on to indicate that it would not restrict application of the "apparent authority" rule to those having certain types of authority, such as the power to hire and discharge. It suggested that "the management might very well issue

to "supervisors" but not made known to the employees cannot obviate employer responsibility if the instructions are not effective to prevent misuse of the employer's power; the employer is obligated to take "effective means to stop repeated violations of the Act." *Swift & Co.* v. *National Labor Relations Board,* 106 F. (2d) 87, 93 (C. C. A. 10).[19] See also *National Labor Relations Board* v. *Ford Motor Company,* decided October 8, 1940 (C. C. A. 6), where employer responsibility for antiunion violence by employees was based, in part, upon the fact that an official of the Company, who was in charge of the employees in question, expected the union's distribution of literature to be violently resisted, but "would take no action to prevent it, indulging the belief that if it occurred it would not be the fault of the Ford Motor Company."

In the present case, we submit, the authority of Fouts, Shock, Bolander, and Dininger, together

---

orders to all having any authority over other employees, that they shall say or do nothing respecting union affiliations" (*ibid.*). In *National Labor Relations Board* v. *Brown Paper Mill Co.*, 108 F. (2d) 867 (C. C. A. 5), the court held that where the employer has itself taken a position hostile to "outside" unions, it must assume responsibility for aid to an "inside" organization by "officers or employees, not officers, but having the confidence of the management, and acting for it * * *" (108 F. (2d), at 871).

[19] The employer's duty to take affirmative action to prevent the employees from being misled concerning the management's position was emphasized in *Kansas City Power & Light Co.* v. *National Labor Relations Board*, 111 F. (2d) 340 (C. C. A. 8), where the employer, while abandoning a plainly company-dominated Employees Representation Plan, failed

with the other circumstances surrounding their conduct, warranted the toolroom employees in believing that they spoke and acted on behalf of the management in conducting their extensive campaign to establish the I. A. M. in the toolroom and to keep the U. A. W. out. Their threats of discharge and their promises of a better efficiency rating (*supra,* p. 18) implied the exercise of the company's economic power, not their own. They purported to represent the management, impressing upon the employees the fact that the management would prefer men who joined the I. A. M. (R. 31, 34, 42, 90–91, 338–339, 391, 393); these representations and the inference that their vigorous campaign was undertaken upon orders from higher up, were the more certain of acceptance in view of the discriminatory discharges of U. A. W. members, and of the activities of Personnel Direc-

---

to announce to the employees "that the Plan was defunct" (111 F. (2d), at 346–347). The court stated that "it is not the motive influencing this company stand but the effect of such inaction upon the employees which is important in this situation." In *Westinghouse Electric & Manufacturing Co.* v. *National Labor Relations Board*, 112 F. (2d) 657 (C. C. A. 2), pending on petition for certiorari, the court held that, in view of the employees' probable understanding that a new "inside" organization was the successor of the old and enjoyed the favor accorded the old by the company, the fact that the company "had done nothing to mark the separation between the two" constituted the source of its responsibility (112 F. (2d) at 660–661). The same ground of decision was adopted in *Western Union Telegraph Co.* v. *National Labor Relations Board*, decided August 9, 1940 (C. C. A. 2).

tor Lewis, Superintendent Shimer, and Foreman McCoy (*supra,* pp. 16, 18–19), all making plain to the employees that the Company was determined to have the I. A. M., if it had to have any "outside" organization in the toolroom. These circumstances likewise establish that the Company must assume responsibility for the activities of Byroad and Baker, who worked in association with and pursuant to the direction of Fouts and Shock in carrying the Company's message to the employees (*supra,* pp. 17, 19). What they did, therefore, is "imputable to the company," as the court below held (R. 394, 389).

Petitioners contend that the circumstance that Fouts, Shock, Bolander, and Dininger were members of the I. A. M. precludes any inference that their activities were on behalf of the Company (Br., 20–21). Their activities, of course, predated their I. A. M. membership, but the short answer is that the example set by higher officials of the Company and the Company's ~~claim~~ plan preference for the I. A. M. "were enough to justify the inference that the subordinates' acts were more than spontaneous efforts of members to strengthen their own union." *Western Union Telegraph Co.* v. *National Labor Relations Board,* decided August 9, 1940 (C. C. A. 2). Realistically, the employees could not have believed that the very men who had openly espoused the Company's interests in the earlier drive to destroy the U. A. W. by promoting the Association, were now motivated, not by the Company's

desires, but by their own wish to exercise the right of self-organization (*cf.* R. 394). Indeed, statements by the employees in question that the sole purpose of establishing the I. A. M. was to "beat the C. I. O.," that the employees would be free to withdraw from the I. A. M. once this objective was attained, and that the Company "could tear up the contract" once "the trouble was settled" (*supra*, pp. 17–18, 20) conclusively rebut petitioners' argument that Fouts, Shock, Bolander, and Dininger were merely advancing the interests of their own union and that this was obvious to the employees.

The Board found that (R. 341) "Although a union may admit minor supervisory employees to its ranks, yet when, pursuant to the known desires of the employer, they engage in activities to establish a labor organization favored by the employer, they must be regarded as acting in behalf of the employer." In challenging the correctness of this finding, petitioners necessarily contend that coercive conduct may be legalized simply by enrollment of the supervisory staff in the union favored by the employer. The Act protects the supervisor's exercise of his right of self-organization as an employee; but it also protects the other employees from his exercise of the prestige and economic power of the employer in behalf of a particular labor organization. Eligibility for membership in the I. A. M. is no concern of the Board. But in

determining whether the actions of employees in positions of authority reasonably appeared to be taken by them as management representatives, the Board is not required to give conclusive weight to their affiliation with a particular union. That is but one factor affecting the impression made by their activities; here, we submit, that factor was plainly outweighed by the other circumstances indicating that they spoke for the management.[20]

---

[20] In *National Labor Relations Board* v. *Christian Board of Publication*, decided July 25, 1940 (C. C. A. 8), the court stated:

"The respondent must be held responsible for the acts of its supervisory employees even though those employees may be included in an appropriate unit for collective bargaining. If it were otherwise an employer could freely influence his employees' freedom of choice by this means yet claim immunity. As between respondent and its foremen the doctrine of respondeat superior applies and the responsibilities of that relationship are not suspended merely because the foremen chance to be included within the appropriate unit for collective bargaining."

A contention identical in all respects with petitioners' reliance upon these employees' membership in the I. A. M. was advanced, and rejected without discussion, in *Virginia Ferry Corp.* v. *National Labor Relations Board*, 101 F. (2d) 103 (C. C. A. 4). In *National Labor Relations Board* v. *Hearst*, 102 F. (2d) 658 (C. C. A. 9), the employer contested a finding that it was answerable for the activities of a supervisory employee in opposition to organizational activities of the Newspaper Guild, upon the ground that he was eligible for membership in the Guild and had been solicited to join it. The court, without specific mention of this contention, held that the Board's findings concerning the unfair labor practices were supported by substantial evidence (102 F. (2d), at 662).

C

AT THE TIME OF THE EXECUTION OF THE CLOSED-SHOP CONTRACT, THE I. A. M. WAS NOT THE FREELY DESIGNATED REPRESENTATIVE OF A MAJORITY OF THE TOOLROOM EMPLOYEES

The proviso to Section 8 (3) requires, as a prerequisite to validity of a closed-shop contract, that the labor organization entering into such a contract be "the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made." Apart from the question whether the toolroom employees constituted an appropriate unit (*infra,* pp. 43–59), the contract cannot stand because the I. A. M. was not the freely designated majority representative of the toolroom employees which Section 9 (a) envisages. The Act recognizes only majority representations which are freely obtained; coerced majorities plainly cannot vest in purported representatives the exclusive representation provided in Section 9 (a). The Board found that the I. A. M.'s membership was attributable to the Company's unfair labor practices and that that organization did not represent an uncoerced majority of the toolroom employees at the time the contract was executed (R. 346–347). These findings, supported by the subsidiary findings already discussed, furnish a further ground upon which the closed-shop contract is plainly invalid.

D

THE BARGAINING UNIT COVERED BY THE CLOSED-SHOP CONTRACT WAS NOT AN APPROPRIATE UNIT

Finally, in order for the contract to be valid under Section 8 (3), the toolroom employees, the unit "covered by such agreement when made," must have constituted an appropriate bargaining unit. Section 9 (b) vests in the Board the power to determine, under the circumstances of each case, what the appropriate unit is.[21] In the present case, a determination of the appropriate unit by the Board was necessary not only in passing upon the validity of the I. A. M. contract but also in ascertaining whether or not the Company violated Section 8 (5) in refusing the U. A. W.'s request for bargaining as the exclusive representative of all the production employees, including those employed in the toolroom. The Board found that the production employee unit was appropriate under the circumstances of this case and, consequently, that a unit composed of the toolroom employees alone was not appropriate (R. 346–347, 350–351). Unless this determination is overturned, the closed-shop contract is invalid by reason of the unit which it covers.

---

[21] Section 9 (b) provides as follows:

"The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

269393—40——4

In attacking the Board's finding upon the appropriateness of the bargaining unit, petitioners must sustain a heavy burden. Section 9 (b) (*supra,* note 21, p. 43) and its legislative history show clearly that the Board is not subject, in making determinations of this nature, to any inflexible rule; delimitation of the appropriate unit is "obviously for determination in each individual case." [22] The Board exercises, in this regard, "a broad power of discretion" and its determination is final unless "clearly arbitrary upon the point" *National Labor Relations Board* v. *Lund,* 103 F. (2d) 815, 819 (C. C. A. 8).[23]

The Board's power in this respect is but another instance of the broad discretionary powers which are frequently vested in administrative agencies having an expert knowledge and specialized ex-

---

[22] House Report No. 1147 (74th Cong., 1st Sess.), p. 22. It was there recognized that the question would "ordinarily arise as between two or more bona fide organizations competing to represent the employees."

[23] See also *National Labor Relations Board* v. *Whittier Mills Co.*, 111 F. (2d) 474, 477 (C. C. A. 5); *National Labor Relations Board* v. *Piqua Munising Wood Products Co.*, 109 F. (2d) 552, 554 (C. C. A. 6); *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, decided July 23, 1940 (C. C. A. 8); *Bussmann Mfg. Co.* v. *National Labor Relations Board*, 111 F. (2d) 783, 785 (C. C. A. 8); *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 143 (C. C. A. 9), cert. denied, 304 U. S. 575; *National Motor Bearing Co.* v. *National Labor Relations Board*, 105 F. (2d) 652 (C. C. A. 9); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 789 (C. C. A. 9).

perience in the field of their operation. *U. S. Navigation Co.* v. *Cunard S. S. Co.*, 284 U. S. 474, 485; *Federal Trade Commission* v. *R. F. Keppel & Bro.*, 291 U. S. 304, 314. Cf. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270.[24]

---

[24] Petitioners' statement that "The Railway Labor Act confers similar discretionary powers to prescribe units on the Railway Mediation Board" (Br., p. 27) is erroneous. The Railway Labor Act provides:

"The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of the Act." 45 U. S. C. A., § 152 (4); 48 Stat. 1186.

Thus the Railway Labor Act makes mandatory the craft or class unit. The language quoted by petitioner (Br. 28) from *Brotherhood of Railway & Steamship Clerks* v. *Nashville, C. & St. L. Ry. Co.*, 94 F. (2d) 97 (C. C. A. 6), concerned the Railway Mediation Board's resultant lack of authority to determine bargaining units and is inapplicable under the National Labor Relations Act, which expressly vests in the Board power to determine whether "the employer unit, craft unit, plant unit, or subdivision thereof" is appropriate in the particular case (Section 9 (b)). However, the abuse of discretion test has been applied to the Railway Mediation Board's exercise of powers which are granted it; thus the courts have refused to disturb exercises of that Board's power to "designate who may participate in the election and establish the rules to govern the election" (45 U. S. C. A., § 152 (9); 48 Stat. 1186) absent the required showing of arbitrariness. *Association of C. E. of A. T. & S. F. Ry. System* v. *Brotherhood of Ry. and S. S. Clerks*, 85 F. (2d) 152, 157 (C. C. A. 7) *Brotherhood of Locomotive Firemen and Enginemen* v. *Kenan*, 87 F. (2d) 651, 654 (C. C. A. 5); *Brotherhood of Railway Trainmen* v. *National Mediation Board*, 88 F. (2d) 757, 761 (App. D. C.); *Nashville, C. & St. L. Ry.* v. *Ry. Employees' Dept.*, 93 F. (2d) 340, 342 (C. C. A. 6), certiorari denied, 303 U. S. 649.

In the present case, the U. A. W. contended that a unit composed of all the production employees, including the toolroom employees but excluding buffers and metal polishers, supervisory and office employees, was appropriate.[25] The I. A. M. contended that the toolroom employees constituted a separate appropriate unit (R. 350). If the Board was not required to set the toolroom employees apart, no question arises concerning the appropriateness of the unit found.[26]

Where conflicting requests for a plant unit and for a craft unit are advanced, a difficult question is presented for resolution by the Board. In some cases factors such as the history of collective bar-

---

[25] The buffers and metal polishers have a closed-shop contract with the Company and all parties to the proceeding before the Board agreed that they should be excluded from the appropriate unit. Also no objection was made by any party to exclusion of supervisory and office employees, in accordance with the Board's normal practice. See *Third Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1939), pp. 180–185.

[26] Both the production and toolroom employees are eligible for membership in the I. A. M. as well as in the U. A. W., and both unions attempted to enroll the production and toolroom employees (R. 157–158). Some 20 of the 63 toolroom employees joined the U. A. W. (R. 173–175), thereby expressing their preference that the unit for collective bargaining be the plant rather than the craft unit. Eligibility for membership and the actual desires of employees as demonstrated by their free self-organization are both factors to which the Board normally and properly gives considerable weight in determining the propriety of the bargaining unit. *Third Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1939), pp. 163–167.

gaining in the plant, or similarity or dissimilarity in the objects of bargaining, may rather conclusively point to one unit or the other as better fitted "to insure to employees the full benefit of their right to self-organization and to collective bargaining * * *" (Section 9 (b), note 21, p. 43, *supra*).[27] Where factors such as these are evenly balanced, however, the Board has given determinative weight to the desires of the employees themselves, as evinced in their self-organization or as expressed in the polling booth. But here, too, a

[27] For a discussion of the various factors deemed relevant by the Board in considering the appropriateness of proposed bargaining units, see *Third Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1939), pp. 156–180. In the case at bar there had been no previous history of collective bargaining on either a craft or plant basis. The evidence showed that either basis was possibly appropriate. There is a close functional interdependence between the work done in the toolroom and that done in the production departments. The toolroom employees make and repair the tools and dies and repair the machinery used in the other departments (R. 75, 88, 135–136, 298, 350–351). It is not disputed that "primarily the toolroom is the beginning of production. Without the toolroom, without tools and dies there cannot be any production" (R. 88–89). The toolroom exists solely for purposes of the production departments; none of the tools and dies made are sold (R. 88). The toolroom is located in the center of the building housing all of the Company's employees; it is separated from the rest of the plant only by a wire fence having three gates, through which the toolroom employees are free to enter departments (R. 37–38, 89, 97, 129–130). The repair of machinery throughout the plant requires the toolroom employees to work in other departments (R. 27–28, 54). Maintenance workers also frequently come to the

further question has arisen: should the Board hold decisive the wishes of a majority of *all* the employees or the wishes of a majority of those who, it is contended, should be set aside from the others as a separate unit? Manifestly, neither majority can claim an unqualified right that their wishes be respected, to the exclusion of consideration of all other relevant circumstances (but compare Pet. Br., pp. 31–32). If the Board were required to give conclusive weight to the wishes of a minority in a proposed "employer unit" or "plant unit," the Board's power to determine appropriate units would in fact be vested in that minority.

To resolve conflicts between proposed craft and industrial units in the same plant, the Board propounded, in the exercise of its informed discretion, not as a matter required by the Act, the so-called Globe Doctrine, upon which petitioners rely.[28] See Cohen, *The "Appropriate Unit" under the National Labor Relations Act,* 39 Columbia Law Re-

---

toolroom in order to use special equipment (R. 133). On occasion, production workers come to the toolroom to have their tools repaired (R. 78–83, 96). This factor of functional interdependence, indicating the presence of common questions in the bargaining of all the employees, is given substantial weight under the Board's settled policy. *Third Annual Report, supra,* pp. 191–192; see *Matter of Acklin Stamping Co.*, 2 N. L. R. B. 872, 877. While the toolroom employees are more skilled and are generally paid a higher rate of pay than the production workers, some of the latter are better paid (R. 8, 99, 138–139).

[28] The Globe Doctrine takes its name from *Matter of Globe Machine & Stamping Co.*, 3 N. L. R. B. 294, the case in which it was first evolved and applied by the Board.

view 1110, 1128. This doctrine is a simple one: where two conflicting units, a craft unit and an industrial unit, are proposed, resolution of the conflict will ordinarily depend upon the freely expressed desires of a majority of the employees in the less inclusive unit. In other words, when a majority of a defined craft have made a free choice, that choice will be preferred over that made by a majority of all the employees seeking collective bargaining.[29] If their choice is to set themselves apart, the craft unit is found to be appropriate; if they freely choose to be included within the larger unit, an industrial unit including them is found to be appropriate.

In the present case, however, there was no free expression of desire for a separate unit by a majority of the toolroom employees. Membership in the I. A. M.'s toolroom lodge could not be accepted as such an expression because it was ob-

[29] See *Third Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1939), pp. 167–174. The Board stated (at p. 167) that the desire of the employees "has been given cardinal significance in cases where rival organizations have advanced different contentions as to the form of organization which should govern among a particular company's employees, and the circumstances of the case have been such that if either contention had been unopposed it would have been adopted. This situation has involved most commonly a dispute between one or more unions advocating organization along plant-wide lines, and one or more unions advocating organization along plant craft lines. In such situations, the Board has established the practice of considering the wishes of a majority of the employees in the craft group as to their inclusion in a plant-wide unit."

tained through the assistance of employer interference and coercion which destroyed freedom of choice among the toolroom employees (*supra,* pp. 13–26). The Board therefore found that the Globe Doctrine was not applicable (R. 351).[30] Absent the basis for the Globe doctrine, the Board found appropriate the more inclusive unit proposed by the U. A. W. (R. 350–351). The present case, therefore, represents no departure from the Globe doctrine. See Cohen, loc. cit., *supra,* p. 48.

The exact purport of petitioners' contention that it was arbitrary for the Board not to set the toolroom employees apart is not clear. Petitioners claim that the Board concedes the appropriateness of a unit composed only of the toolroom employees but maintains that employer interference "renders the unit inappropriate" (Br. pp. 11, 29, 30, 32–35). Neither the Board's findings nor our argument in the court below or here will stand this interpretation. Admittedly, the toolroom employees constitute a craft, as they ordinarily do; they would ordinarily, therefore, comprise an appropriate unit if a majority of them decided, without interference or coercion, that they wished to bargain separately.

---

[30] The Board's finding reads as follows (R. 351):

"While ordinarily we have regarded as controlling the free choice of a majority of the employees in a well defined craft as to the form of organization they desire, in the present case the [Company's] conduct in influencing such choice precludes the application of this doctrine in the determination of the appropriate unit or units."

But this is not to say that they would have necessarily made up an appropriate unit had there been no interference by the Company; such an assertion is necessarily based upon an assumption that the choice which the employer compelled the men to make would have been made had he not interfered. No such assumption can be made.

Similarly, petitioners err in stating that "the Board has found in all other cases that these factors (training, skill, aptitude, mutuality of interests and historical development) combine to make tool and die workers appropriate craft units" (Pet. Br., pp. 11, 30–31, 32). The Board has considered these factors in determining that tool and die makers constitute a craft, that is, a well-defined group sufficiently separate in employee interest from other employees to make them a *possible* appropriate collective bargaining unit. But the Board's finding as to whether such craft is an appropriate collective bargaining unit has basically rested upon the freely expressed desire of a majority in the craft for or against a separate unit. Indeed, in the type of case to which petitioners refer, an election has preceded determination of the appropriate unit. In directing the election, the Board finds that either the craft unit or the industrial unit may be appropriate, depending upon the desires of a majority of the craft. The factors mentioned by petitioners do not serve, without more, to establish the appropriateness of the unit

claimed.[31] In other words, under the Globe Doctrine the existence of a well-defined craft is not a basis alone for holding the craft unit appropriate; the operative fact is the free desire of a majority of the craftsmen for a craft unit.

But, petitioners argue, assuming that membership in the I. A. M. was coerced and afforded no basis for a finding that the toolroom employees constituted an appropriate unit, the Board should have directed an election to be held after the effects of the unfair labor practices were dissipated, and thereby determined the desires of a majority of the toolroom employees (Br., pp. 34–35). The short answer lies in the fact that this was not a representation proceeding under Section 9 but an unfair labor practice case under Section 10. The Board had before it for determination the issue whether the Company had violated Section 8 (5) of the Act by refusing to bargain with the U. A. W. as the exclusive representative of all the production employees, including the toolroom employees. This involved a determination whether the U. A. W. represented a majority of the employees in an appropriate unit at the time of the refusal to bargain. At that time there was no uncoerced choice by a majority of the craft to set themselves

[31] For cases in which a so-called "Globe election" was held upon conflicting claims of craft and industrial units see *Fourth Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1940), pp. 86–87; *Third Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1939), pp. 167–174.

apart from the industrial unit. Nor could the Board undertake to determine whether such a choice would have been made had no assistance been rendered to the I. A. M. by the Company. An election in 1938 could not demonstrate what unit was appropriate in 1937, even were it possible to hold a free election before compliance by the employer with an order remedying the unfair labor practices (see pp. 66–70, *infra*).

In other words, petitioners contend that even if there was no free desire by a majority of the toolroom employees for a craft unit, petitioners' organizational campaign with employer assistance prevented inclusion of the toolroom employees in *any* unit during 1937 and deprived the Board of power to determine whether the Company violated Section 8 (5) by refusing to bargain with the U. A. W. as the representative of a majority in a unit including those employees. This contention is plainly unsound. Unless a majority of the craft employees have freely elected to disassociate themselves from the other employees, there is no reason for the Board to deny effect to the free choice of a plant unit by a majority of all the employees, as evidenced by the U. A. W.'s conceded majority in this case. A substantial number of the toolroom employees were included in this majority (note 26, p. 46, *supra*). Nor may petitioners contend that all the employees should have been deprived of their right to bargain collectively simply because peti-

tioners were introduced into the plant with the employer's assistance and obtained a coerced membership among a craft. The Board's determination that the unit for which the U. A. W. sought to bargain was an appropriate unit was entirely reasonable in the absence of a free desire to the contrary on the part of a majority of the craft, entertained at the time of the refusal to bargain.[32]

In the last analysis, petitioners' position is that labor organizations claiming to represent crafts have an absolute right to have the units they favor approved as appropriate by the Board, regardless of whether or not the representation they claim has resulted from unfair labor practices. Thus, petitioners construe the Board's finding that the unit freely desired by a majority of all the employees in this case is appropriate, as "punitive" against the craft union and as operating "to destroy a craft unit" (Pet. Br., 34–36). Aside from the fact that the Act does not require the appropriateness of proposed craft units at all, much less under any and all circumstances, no one may demand recognition of a status obtained through a denial of rights guaranteed by public statute. *National Licorice*

[32] Petitioners' assertion that the Board must give conclusive weight even to a coerced choice by a craft majority lest the employer, by gratuitous favor to unwilling unions, be enabled to render an otherwise appropriate unit inappropriate (Br., pp. 32–35), surely is not pertinent upon the facts of this case. The Board is equipped to uncover such attempts, and has discretion under the Act appropriately to deal with them.

Co. v. *National Labor Relations Board,* 309 U. S. 350, 364–366. Further, the claim disregards the availability of the representation proceedings provided by section 9 of the Act, whereby a ready means is afforded for the determination of bargaining units and representatives freely desired by the employees (*infra,* pp. 74–76). The Board's order in this case, and the practice of the Board, leave open the way for future representation of the employees by the I. A. M., the U. A. W., or any other labor organization freely designated by a majority in any unit which may hereafter be found appropriate.[33] Petitioners' assertion that this is no

[33] The Board's order requiring the Company to cease giving effect to the closed-shop contract with the I. A. M. expressly provides that "nothing in this order shall preclude the respondent from hereafter making an agreement with the International Association of Machinists, or any other organization (not established, maintained, or assisted by any action defined in the National Labor Relations Act as an unfair labor practice) requiring as a condition of employment, membership therein, if such labor organization is the representative of the employees in an appropriate bargaining unit as provided in Section 9 (a) of said Act" (R. 363).

The Board's decisions likewise make it clear that at a later date the I. A. M. may come in and have its claim for a craft unit considered on the basis of the facts then existing; the Board's order in the present case will not bar a determination that a different unit is then appropriate. In *Matter of Pacific Greyhound Lines,* 9 N. L. R. B. 557, 573–574, the Board, speaking in respect to the effect to be given the results of a Globe election in a subsequent case said: "We find nothing in the Act which requires or supports the application of a principle analogous to that of the judicial doctrine of *res judicata* in matters involving a determination of the appropriate unit for collective bargaining purposes. Sec-

protection because of the Board's practice that "designation of a unit and certification of a representative therein" is binding for one year (Br., 35–36) ignores the fact that more than two years have elapsed since the Board issued its order and the Company complied with it. Further, the Board has never determined whether it will apply the one-year rule to an order remedying unfair labor practices under Section 10 (c), as distinguished from a certification of representatives pursuant to Section 9 (c).

In addition to the inapplicability of the Globe Doctrine as a basis for carving the toolroom employees out of the more inclusive unit, a majority of the Board found that since the I. A. M. was attempting to enroll all of the production employees, including the toolmen, on a plant unit basis, it could not be heard to maintain that the craft unit was appropriate (R. 351).[34] The record

---

tion 9 (b) of the Act empowers the Board to 'decide in each case' the appropriate unit and its guide in so doing, as therein stated, is 'to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act.' A prior decision in regard to whether a certain unit of employees is appropriate for purposes of collective bargaining is a circumstance, but not a decisive one, which the Board in the exercise of a sound discretion will consider should such question again present itself in a subsequent proceeding involving the representation of such employees."

[34] The third member of the Board, Chairman Madden, believed that this point was unnecessary for decision of the case and that no opinion should be expressed concerning it (R. 366).

shows that as early as August 10, prior to execution of the closed-shop contract on August 11 (*cf.*, Pet. Br., 37), the I. A. M. extended its organizational campaign from the toolroom employees to all the production employees (R. 156–157). Supporting the Board's finding that the creation of two I. A. M. locals, one for the toolroom employees and the other for the remainder of the production employees, "must be deemed artificial" (R. 351), is the fact that the membership cards signed by the employees designated the I. A. M., not the respective locals, to act as the bargaining representative (fol. 637; see R. 11). In the proceedings before the Board it was the I. A. M., not the respective locals, which claimed representation of the employees (R. 11–15, 327). MacDonald, an official of the Grand Lodge, not of either local, was the chief negotiator for the union in the bargaining between the I. A. M. and the Company (R. 343, 345). He took the leading part in obtaining the closed-shop contract covering the toolroom and signed it for the I. A. M., along with officials of the toolroom local (R. 10, 343, 345). He also conducted the bargaining concerning the production employees (Fol. 183–184, 318–320; Tr. 1528–1532). MacDonald, who represented the I. A. M. at the hearing before the trial examiner, there stated that if the more inclusive unit were held appropriate, the I. A. M. would bargain on behalf of all employees in that unit (R. 158–159).

This circumstance cast further doubt upon the validity of the assertion that, by enrolling in the I. A. M., the toolroom employees expressed a desire for the craft unit. Even had such membership been freely obtained, which it was not (*supra,* pp. 13–26, 42), the desire indicated was at least equivocal.[34a] And it was plainly proper for the Board to give weight, as it did (R. 351), to the free and unequivocal choice of the plant unit indicated by a substantial number of the toolroom employees in joining the U. A. W. (note 26, p. 46, *supra*). There was no history of collective bargaining by the craft; the toolroom employees had not theretofore organized themselves on the basis of a craft unit; and the I. A. M. was not organizing in such a way as to engage in craft bargaining. On the contrary, the I. A. M., along with the U. A. W., tacitly recognized the desirability of enrolling all of the employ-

[34a] An employee who joined the I. A. M. of his own free will—assuming that that was possible despite the Company's unfair labor practices—must have understood from the I. A. M.'s plant-wide campaign, that if that organization achieved recognition, it would, in collective bargaining with the Company, have the united force of all the production employees, including the toolroom employees, behind it. This is the primary consideration motivating choice by employees of the plant unit over the craft unit; labor organizations representing plant units frequently advance separate terms on behalf of particular classifications of workers, but this is not regarded as bargaining on behalf of a craft unit. The test, at least in the view of the employee, is whether all the employees or only the members of the craft stand behind the bargaining representative.

ees, including the toolroom employees, in order to achieve bargaining strength.

Petitioners assert (Br. 37–39) that it is the uniform practice of the I. A. M. to segregate employees such as the toolroom employees from production employees and to organize them into separate locals. But organization of separate locals is beside the point where the bargaining is jointly done for a composite unit. See note 34a, p. 57, *supra*. The I. A. M. has consistently sought to broaden the base of its jurisdiction. It has repeatedly advocated amalgamation of all metal trade labor organizations so as to strengthen, by broadening, the bargaining unit, has, in practice, joined with other such unions in bargaining on behalf of a broader unit, without the formality of amalgamation, and has frequently entered into contracts with employers covering tool and die workers along with production and other employees.[35]

---

[35] A. O. Wharton (President of I. A. M.), *Fifty Years of the Machinists Union*, in Labor Information Bulletin, U. S. Bureau of Labor Statistics, Vol. V, No. 5 (May 1938); *Proceedings of the 14th Convention of the International Association of Machinists* (1911), pp. 80, 137; *Proceedings of the 15th Convention, etc.* (1916), p. 83; *Proceedings of the 16th Convention, etc.* (1920), pp. 182–1901; *Proceedings of the 19th Convention, etc.* (1936), pp. 54–64, 162–164, 251, 278; Paragraph 7 of the I. A. M.'s constitution, 1911, see *Proceedings of the 14th Convention, supra*, pp. 13–14; *Machinists Monthly Journal* (official organ of I. A. M.) September 1937, p. 603 (Lockheed Aircraft contract); *ibid.*, December 1937, p. 829 (Continental Can contract); *ibid.*, October 1937, p. 672 (Portland Cement contract); *ibid.*,

In the present case, the I. A. M. plainly did not consider arbitrary a single unit which would permit all of the production employees to bargain through a single representative. That view was first advanced after the Board determined that the U. A. W., not the I. A. M., was the authorized representative in the plant unit. The source of peti-

---

September 1938, p. 681 (Ralph N. Brodie contract); *ibid.*, September 1938, pp. 733–734 (contracts in general).

Relevant to the question of the I. A. M.'s claimed adherence to craft unionism, as well as to petitioners' claim that in the present case the Board has been guilty of "outrageous interference with [the] internal affairs" of the I. A. M. (Br., 38–39), are the conflicting claims made before the Board in *Matter of Standard Forgings Corp.*, 26 N. L. R. B., No. 122, decided August 28, 1940. In that case petitions for certification were filed by a C. I. O. union and by the I. A. M. The I. A. M. contended that the appropriate unit should consist of "all production and maintenance employees employed in the departments known as the general machine shop, small machine shop, die turning department, die sinking department, sheet metal department, axle cutting department, axle turning department, and axle shed." Chicago Die Sinkers Local No. 1512 of the I. A. M. intervened and, in contravention of the claim advanced by its parent organization, contended that the die sinkers should be set apart as a separate appropriate unit. The I. A. M. opposed the Local's request for certification as representative of the die sinkers. The Board pointed out that its regular practice was to dismiss "proceedings wherein two unions subject to discipline by the same parent body have disagreed over the extent of their jurisdiction." In this case, although both the I. A. M. and Local No. 1512 were both affiliated with the same parent body (the A. F. of L.), the Board held that since the Local was chartered by and subordinate to the I. A. M., the I. A. M.'s opposition was conclusive upon the Local's claim.

tioners' complaint is not the breadth of the unit, but the identity of the representative.

Since the I. A. M. had been assisted by the Company's unfair labor practices, since the I. A. M. was not the freely designated representative of a majority of the toolroom employees, and since those employees did not constitute an appropriate bargaining unit, the closed-shop contract between the Company and the I. A. M. failed to satisfy any one of the three conditions imposed by the proviso to Section 8 (3) (pp. 12–13, *supra*). The contract was plainly invalid under the express terms of the Act.

E

THE ORDER REQUIRING THE COMPANY TO CEASE GIVING EFFECT TO ITS CLOSED-SHOP CONTRACT WITH THE I. A. M. IS VALID

The Board ordered the Company to cease and desist from giving effect to its closed-shop contract with the I. A. M. (R. 363). Continued operation of the contract would cause the Company to discriminate against employees in violation of the Board's order and of the Act. Since the contract is illegal, the order requiring the Company to cease enforcing it is plainly valid as an exercise of the Board's mandatory power to enjoin unfair labor practices, as well as of its affirmative power to effectuate the Act's policies by removing improper restraints upon the employees' exercise of their

rights. *National Licorice Co.* v. *National Labor Relations Board,* 309 U. S. 350; *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 236; *National Labor Relations Board* v. *National Motor Bearing Co.,* 105 F. (2d) 652, 660 (C. C. A. 9).

II

THE ORDER REQUIRING THE COMPANY TO BARGAIN COLLECTIVELY WITH THE U. A. W. AS THE EXCLUSIVE REPRESENTATIVE OF THE PRODUCTION EMPLOYEES IS VALID

Petitioners attack the order requiring the Company to cease and desist from refusing to bargain collectively with the U. A. W. (R. 363), and the notices provision (R. 365) insofar as it requires a statement that the Company will bargain with the U. A. W. (Pet. Br. 41–53). Petitioners do not deny that these provisions constitute the normally proper remedy for a refusal to bargain, as this Court and the Circuit Courts of Appeals have held. Instead, the basis of challenge in the instant case is that the Board was bound to withhold the normal remedy because petitioners filed with the Board, four days before issuance of its order, an affidavit and letter claiming that the I. A. M., not the U. A. W., then represented a majority of the production employees (R. 11–15).[36] The argument is

[36] The letter (R. 12) and petitioners' brief (p. 42) rely in part upon an asserted agreement for an election entered into between the Company and the U. A. W. in settlement of a suit in a state court to enjoin strike activities by the U. A. W.

that, while the U. A. W. was concededly the authorized representative of the employees at the time of the refusal to bargain (R. 352, 407–408) and while petitioners made no showing at the hearing of any majority shift in the period following the refusal to bargain, the bargaining order was nevertheless rendered improper by the assertion, on the eve of the Board's decision, that the U. A. W. had been replaced as the accredited representative. The court below rejected this contention, stating (R. 374–375):

> Notice of the I. A. M.'s claim of subsequent change was not given to the Board until four days prior to its decision. No effort was made, pursuant to Section 10 (e), to apply to a court for leave to adduce additional evidence. In addition to failure to

---

(R. 12). The agreement, to which the I. A. M. was not a party, provided that the employees should return to work and the strike be "suspended pending an election to be held at such time and place as the Labor Relations Board may determine" (R. 164–165). But thereafter, at the hearing before the trial examiner, it was stipulated that the U. A. W. had been designated by a majority of the employees (R. 175–176), rendering the election unnecessary, as the Board found (R. 357, note). The other consent election agreements in evidence (R. 165–168) were not completely executed because of disagreement concerning the appropriate unit and other matters (R. 356–358). The parties understood that if the record established majority representation by one of the unions in an appropriate unit, no election would be necessary (R. 78, 83). Petitioners' present contention that an election should have been held must rest solely upon its assertion, after the hearing, that a shift of majority had occurred, not upon any agreement of the parties.

exhaust this judicial remedy, two considerations support the Board's refusal to call an election in the present circumstances. First, there is nothing to indicate that the unfair practices, which the Board and (as will appear) we have found existed, were remedied until after the order was entered. Therefore, any shift in majority affiliation between the hearing and the decision, had it occurred, presumably must have been affected or effected by them. Furthermore, the case is not one in which the majority at the time of the hearing was doubtful or improperly constituted, as by the employer's aid or inclusion of ineligible members. Whatever may be the rule when such defects exist, in their absence the presumption arises that the freely established majority continues until the Board has an opportunity to make its decision. In its discretion it may hear additional evidence as to the majority's continued existence. But these presumptions, when sustained by the facts, should prevent its refusal to do so from being arbitrary, as against mere *ex parte* and self-serving assertions that a shift has occurred. Any other rule would make a merry-go-round of the Act, since like representations could be made in turn following each new one by the contending unions in order to prevent or delay a decision contrary to their interests, with no other result than to maintain the proceeding in a state of indefinite suspension and indecision. This view does no more than afford the

> Board a reasonable opportunity to perform its functions under the Act. It does not deprive employees of the power to select their representatives by choice of the majority. If conditions have changed and a majority now wish to join a local I. A. M., they may do so and call for an election.

The Board's position concerning asserted changes in majority representation following the commission of unfair labor practices was fully argued to the Court in *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U. S. 318.[37] The Court enforced the order requiring collective bargaining, stating (p. 340):

> In view of the substantial support in the evidence for the Board's findings that the company intimidated and coerced its employees and dominated the Federation, the Board properly concluded that "The unfair labor practices of the respondent cannot operate to change the bargaining representative previously selected by the untrammeled will of the majority."* And, accordingly, the Board was justified in its finding "that on April 4, 1937, and at all times thereafter, the T. W. O. C., pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in the appro-

[37] Brief for the National Labor Relations Board, No. 588, last Term, pp. 35–60; Reply Brief for the National Labor Relations Board, pp. 14–17.

priate unit for purposes of collective bargaining. * * *

*Cf. Texas & N. O. R. Co. *v.* Ry. Clerks, 281 U. S. 548, 557, 571, affirming 33 F. (2d) 13, affirming 24 F. (2d) 426; 25 id. 873; 25 id. 876, 877–8. [Footnote by the Court.]

The principle that a labor organization freely chosen by a majority of the employees as their bargaining representative is presumed to retain that status until the employees reject it of their own volition, discounting the effects of employer coercion, was established prior to the Act by the decision in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, affirming 33 F. (2d) 13 (C. C. A. 5), affirming 24 F. (2d) 426, 25 F. (2d) 873, 876.[38] The view that, despite apparent or "surface" repudiation of a majority representative induced by illegal employer action, the representative is presumed to retain such status until the employees freely select another representative or choose not to be represented, was adopted by the first National Labor Relations Board, with express reference to the remedial action sanctioned in the *Railway Clerks* case. *Matter of North Carolina Granite Corporation,* 1 (old) N. L. R. B. 89; *cf. Matter of Danbury & Bethel Fur Company,* 1 (old) N. L. R. B. 195. See also *Matter of Lyon Oil Refining Company,* Decisions of the Petroleum Labor Policy Board, p. 34. As this Court has recognized (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines,*

[38] See Brief for the National Labor Relations Board, No. 588, last Term, pp. 43–45.

Inc., 303 U. S. 261, 267), and as the legislative history clearly shows,[39] Congress, in enacting the present statute, relied upon the *Railway Clerks* decision and upon the principles stemming from that decision which had been adopted by administrative tribunals created to deal with labor problems.

Two main considerations constitute the foundation of this principle in a case such as the present one. Requiring an employer to recognize and negotiate with the representative with whom it has illegally refused to bargain is necessary, first, in order to dissipate the coercive effects of the unfair labor practices by restoring the right denied the employees and thus to effectuate the Act's fundamental purpose of insuring collective bargaining under free conditions; and, second, in order that the collective bargaining provisions of the Act shall not be rendered unworkable and unenforceable. We shall discuss these grounds separately.

1. Employees join labor organizations, and otherwise designate representatives, to secure collective bargaining. Accordingly, whether or not the employer recognizes and bargains with the agency selected by the employees is a decisive factor affecting the ability of that representative to secure or retain its constituents. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines,*

[39] Report of House Committee on Labor (H. Rept. No. 1147, 74th Cong., 1st Sess.), pp. 3–7, 15–18, 22, 24); Report of Senate Committee on Education and Labor (S. Rept. No. 573, 74th Cong., 1st Sess.), pp. 2, 9, 13, 16, 17.

Inc., 303 U. S. 261, 271; *cf. Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 568–569. Indeed, the natural and intended effect of a refusal to recognize and bargain with the employees' representative—to preclude the exercise of its principal and essential function—is to divert the employees to a second choice or to persuade them to abandon completely their collective bargaining objective by emphasizing the futility of any representation. An unlawful refusal to bargain with a freely chosen representative, like the illegal recognition of an employer-dominated organization for bargaining purposes, constitutes a "continuing obstacle to the exercise of the employees' right of self-organization and to bargain collectively through representatives of their own choosing." *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 275. For this reason, so long as a refusal to bargain lacks effective remedy and obstacle to free choice which it has created continues; hence any asserted shift away from the freely chosen representative cannot be regarded as the uninfluenced and voluntary action of the employees. The shift might not, and normally would not, have occurred if the representative first chosen had been recognized, as required by the Act. Since the Act proceeds upon the premise that conduct which it prohibits does interfere with freedom of choice, certainly any asserted change, or doubt upon the matter, must be held to be immaterial and be disregarded in order

to give full effect to the policy of the Act to promote and insure only free selections. *Cf. National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241.

This objective cannot be attained merely by restraining unfair labor practices through the cease and desist provisions. The refusal to bargain must be undone by restoring the representative freely chosen by the employees to the position which they conferred upon it but which the employer wrongfully withheld. The order, if it is to effectuate the policies of the Act, must do so by "eradicating" all the effects of the unfair labor practices, "as from the beginning." *Agwilines, Inc.* v. *National Labor Relations Board*, 87 F. (2d) 146, 151 (C. C. A. 5). This can be accomplished only by including in the order a remedy adequate to relieve the coercive effects of the refusal to bargain; that remedy is enforcement of the obligation to negotiate.

In the present case this conclusion is further strengthened by the fact that the employer's unfair labor practices consisted not only of a refusal to bargain, which would have the natural effect of leading the employees away from the U. A. W., but of further illegal acts against the U. A. W. and in favor of the I. A. M. (*supra*, pp. 13–26) which were designed to place the majority precisely where petitioners now claim that it rests. In this respect, petitioners' claim is analogous to that advanced by the employer in the *Bradford Dyeing* case, that the majority vested in the com-

pany union as a result of the unfair labor practices, constituted a bar to enforcement of the order to bargain with the T. W. O. C. Precisely applicable here is the conclusion in that case (*supra*, p. 64), that the employer's unfair labor practices could not serve to change the representative freely selected by the employees.[39a]

The decisions in *National Labor Relations Board* v. *National Licorice Co.*, 104 F. (2d) 655 (C. C. A. 2) and *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8), upon which petitioners rely (Br. 43–46), as well as the decision in *National Labor Relations Board* v. *American Manufacturing Co.*, 106 F. (2d) 61 (C. C. A. 2), give no weight to the important consideration that refusals to bargain and other illegal invasions of the employees' rights to organize and bargain collectively, do have the natural result of dissipating union majorities and of casting serious doubts upon the free nature of subsequent majorities claimed prior to remedying of the unfair labor practices. In conditioning enforcement of the bargaining order upon proof of representation at the time of review, those decisions must assume that an unremedied refusal on the part of an employer to recognize the repre-

[39a] The size of the U. A. W.'s conceded majority representation of the production employees, including 20 of the 63 toolroom employees (note 26, p. 46, *supra*) raises a strong presumption that it would have continued as the freely chosen representative had not freedom of choice been destroyed.

sentative which the employees freely selected is irrelevant to that agency's continued free designation, and will not influence the employees' decision whether or not to designate that representative again in an election held prior to remedying of the unfair labor practices. We submit that a failure to enforce the bargaining order leaves the employees subject to impediments to a free choice equal in force, and at least equivalent in character, to those left in operation by the temporary disestablishment ordered by the Circuit Court of Appeals in *National Labor Relations Board* v. *Falk Corp.,* 106 F. (2d) 454 (C. C. A. 7), and disapproved by this Court, 308 U. S. 453. If a choice of representatives, freely made, is permitted to go unprotected by the agencies of government charged with safeguarding that choice, the employees who made it cannot be expected to venture that selection again.

In short, if the Board's "judgment and discretion in determining, upon the basis of the findings, whether the case is one requiring an affirmative order, and in choosing the particular relief to be ordered" (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.,* 303 U. S. 261, 265) is to be overruled upon the single basis that the chosen representative's majority status may have been lost after the refusal to bargain, full scope will be given to the unfair labor practices in achieving their intended result and the development of genuine collective bargaining will

be substantially hindered. We submit that the Act does not allow an interpretation yielding results so inconsistent with its purposes. If they were to be avoided in this case, the Company's refusal to bargain with the U. A. W. had to be remedied by an order requiring such bargaining before the I. A. M. could claim authority to act as the employees' representative.

2. The decisions modifying the Board's bargaining orders prevent effective and orderly administration of Section 8 (5). Congress intended that this section should be enforced, and in a workable way. Yet, if asserted changes in representation, alleged to have occurred subsequent to a refusal to bargain with a majority representative, are a barrier to remedying the unfair labor practices by an order compelling obedience to the statutory obligation, Section 8 (5) is rendered sterile. If one such claim must be inquired into, successive ones must be, with the result that the Board, as well as the reviewing courts, could never reach a decision.[40]

---

[40] In *National Labor Relations Board* v. *The Boss Manufacturing Co.*, 107 F. (2d) 574 (C. C. A. 7), the Board rendered an order, in August 1937, based upon a prior refusal to bargain. The order required the company to bargain with the union illegally denied recognition. In October 1937 the Board filed a petition for enforcement. In January 1938 the court granted a motion by the company to adduce additional evidence, in which motion it was asserted, *inter alia*, that the proof of majority was too old to support the bargaining order. Upon further hearing before the Board it appeared that membership in the union had increased since the refusal to bargain. The Board filed its supplemental findings with

That is the necessary result of the position of the court in the *Hamilton-Brown* case.

The modification ordered by the Circuit Court of Appeals in the *National Licorice* and *American Manufacturing* decisions, which was not before this Court on review, is even more clearly erroneous; in those cases, without any evidence tending to establish a change, but solely upon doubts raised *sua sponte* and based in part on lapse of time, the reviewing court declined to enforce the bargaining order as issued. Lapse of time is inevitable, through no fault of the employees, their representative, or the Board. It is a concomitant of all administrative or judicial proceedings. Certainly the procedure Congress prescribed for enforcement of the Act cannot be utilized as a basis for not enforcing it. If changes in representation thought to have occurred after a refusal to bargain are relevant at all, which we submit they are not (*supra,* pp. 64–70), clearly only changes occurring prior to the Board's order and reflected in the record made at the hearing before the Board should be considered. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.,* 303 U. S. 261, 271; *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 230; *National*

---

the court and again requested enforcement of its order. When the case came on to be heard in June 1939 the company insisted that proof of the union's then majority status was an essential prerequisite to enforcement of the bargaining order. The court enforced the provision in question without expressly ruling upon this objection.

Labor Relations Board v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 249–250. *Cf. National Labor Relations Board* v. *Fansteel Metallurgical Co.*, 306 U. S. 240, 261–262.

Petitioners attack the view of the court below that acceptance of their contention "would make a merry-go-round of the Act" (R. 375) on the ground that the Board can withhold a bargaining order but dissipate the effects of the unfair labor practices in other respects and then hold an election (Br. 46–48). Noticeably absent is any suggestion as to how the coercive effects of a refusal to bargain with a chosen representative can be dissipated without a requirement that the rights illegally denied be granted (*supra*, pp. 66–70). The argument, in essence, is similar to that advanced on behalf of the employer in the *Falk* case. There the effort was to convert an unfair labor practice proceeding designed to halt and remedy the employer's maintenance of a company union into a representation proceeding designed to determine whether the company union would be selected as the employees' representative even if the employer's sponsorship was withdrawn. Here the effort is to convert an unfair labor practice proceeding designed to halt and remedy an illegal refusal to bargain with a representative whose authority is conceded, into a proceeding for certification of representatives. Both efforts, if successful, have the necessary consequence of permitting unfair labor practices further to defer all collective bar-

gaining, in addition to allowing them full scope in influencing a selection which must be that of the workers alone. Unless the determinative issue in a proceeding under Section 10 is whether the charging union was the duly authorized representative at the time of the refusal to bargain, such proceedings are entirely futile, and may as well be dispensed with in favor of representation proceedings under Section 9 designed to select a representative, whether or not freedom of choice is assured. And if petitioners reply that it is the bargaining order, not the fact of violation, to which subsequent shifts of majority are relevant, the rejoinder is that proceedings under Section 10 based upon refusals to bargain are entirely futile if the Board, while free to find a violation, is powerless to order an effective remedy.

Petitioners contend that the order fastens upon the employees a representative which they possibly may no longer desire, independently of the effects of the unfair labor practices. But "until the Board's order has been faithfully carried out" the employees' real desires "are matters of speculation and argument." *National Labor Relations Board* v. *Brown Paper Mill Co.,* 108 F. (2d) 867, 872 (C. C. A. 5). Nor may it be said that the order deprives the employees of power to change their representative, and thus has the necessary, if not the intended, effect of frustrating petitioners' efforts to be designated as the representative.

269393—40——6

The order does not assure to the U. A. W. a permanent status, or status for any fixed period of time. Section 9 of the Act provides adequate machinery for resolving questions of representation after genuine freedom of selection is restored by removing the impediments the employer has erected. The union attaining its claimed representation after unfair labor practices have destroyed freedom of choice need only wait until this condition has been corrected by compliance with the order; it is then free to petition the Board under Section 9 for investigation of the question concerning representation. In the present case the Company has long since complied with the Board's order; petitioners have therefore long been free to obviate the prejudice they now assert by filing such a petition. Instead, they have continued to rely upon the request for an election made by them before the Board had made any order and when the unfair labor practices were in full effect, and have continued to insist that the election must be conducted as part of an unfair labor practice case, where it has no proper place.

The bargaining order cannot be said to foist an unwanted representative upon the employees, or to preclude recognition of any union seeking to achieve representation, when the employees, or any labor organization on their behalf, may raise

anew the issue of representation.[41] The question here is whether that issue must be determined, as petitioners contend, in circumstances which do not assure full freedom of choice. We submit that to anticipate the question of change without, and in advance of, according recognition to a selection voluntarily made, is to proceed under conditions which leave the employees subject to improper restraints. Obtaining collective bargaining should not require the employees to pay such a price. The essence of petitioners' claim is that they had an absolute right to force the issue at a time when the scales were weighted in their favor. Denial of such a right, they claim, was arbitrary on the part of the Board.

The Board's position that asserted shifts of majority following refusals to bargain or other interference cannot be viewed apart from the unfair labor practices and cannot serve to preclude the normal relief for a violation of Section 8 (5),

[41] The remedy deemed appropriate in the *Railway Clerks* case was reinstatement of the last freely chosen representative to the position of bargaining agency "until such time as these employees by a secret ballot taken in accordance with the further direction of the Court, and without the dictation or interference of the Railroad Company and its officers, should choose other representatives" (281 U. S., at 557). This remedy, devised by a court of equity to restore the status disrupted by interference with freedom of choice, is even more appropriate under the National Labor Relations Act since Section 9 is expressly designed to determine a change in representation and readily permits effective expression of a change.

has been approved by the Circuit Courts of Appeals for the First, Fourth, Seventh, Eighth, and Tenth Circuits in well-reasoned opinions. *National Labor Relations Board* v. *Somerset Shoe Co.*, 111 F. (2d) 681, 690–691 (C. C. A. 1); *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632, 640 (C. C. A. 4); *M. H. Ritzwoller* v. *National Labor Relations Board*, decided May 8, 1940 (C. C. A. 7);[42] *Bussmann Mfg. Co.* v. *National Labor Relations Board*, 111 F. (2d) 783, 788 (C. C. A. 8); *Continental Oil Co.* v. *National Labor Relations Board*, 113 F. (2d) 473, 481 (C. C. A. 10). See, also, *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 869–870 (C. C. A. 2), cert. denied, 304 U. S. 576; *National Labor Relations Board* v. *Whittier Mills Co.*, 111 F. (2d) 474, 478 (C. C. A. 5); *National Labor Relations Board* v. *Louisville Refining Co.*, 102 F. (2d) 678, 681 (C. C. A. 6), cert. denied, 308 U. S. 568; *National Labor Relations Board* v. *Biles-Coleman Lumber Co.*, 96 F. (2d) 197, 198, 98 F. (2d) 18 (C. C. A. 9); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 790 (C. C. A. 9). We submit that the construction of the Act thus approved is a reasonable one and that its acceptance is necessary if the right to collective bargaining conferred by the Act is not to become illusory.

---

[42] But *cf. Stewart Die Casting Corp.* v. *National Labor Relations Board*, decided July 3, 1940 (C. C. A. 7).

CONCLUSION

We respectfully submit that the provisions of the Board's order challenged by petitioners are valid and that the decree below should be affirmed.

FRANCIS BIDDLE,
Solicitor General.
CHARLES FAHY,
Assistant Solicitor General.
THOMAS E. HARRIS,
Special Assistant to the Attorney General.
ROBERT B. WATTS,
Associate General Counsel,
LAURENCE A. KNAPP,
Assistant General Counsel,
MORTIMER B. WOLF,
RUTH WEYAND,
Attorneys,
National Labor Relations Board.

OCTOBER 1940.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. IV, Title 29, Sec. 151 *et seq.*) are as follows:

> SECTION 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SECTION 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a),

in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

SECTION 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. * * *

U. S. GOVERNMENT PRINTING OFFICE: 1940

BLANK PAGE

FILE COPY

Office - Supreme Court, U. S.
FILED
DEC 6 1940
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 16

INTERNATIONAL ASSOCIATION OF MACHINISTS; TOOL AND DIE MAKERS LODGE No. 35, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS; AND PRODUCTION LODGE No. 1200, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS,

Petitioners-Appellants,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent-Appellee.

PETITION FOR REHEARING.

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
Counsel for Appellants.

BLANK PAGE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 16

INTERNATIONAL ASSOCIATION OF MACHINISTS; TOOL AND DIE MAKERS LODGE No. 35, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS; AND PRODUCTION LODGE No. 1200, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS,

Petitioners-Appellants,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent-Appellee.

PETITION FOR REHEARING.

To the Honorable the Justices of the Supreme Court of the United States:

Petitioners respectfully represent to this Honorable Court as follows:

1. Petitioners are the Petitioners-Appellants in the above entitled matter.

2. On November 12, 1940, this Honorable Court issued a decision herein in which it sustained the orders of the

National Labor Relations Board, Respondent-Appellee herein, abrogating the toolroom contract between Petitioners and the employer Serrick Corporation and directing the employer to bargain exclusively with the United Automobile Workers, affiliated with the C. I. O., on a plant-wide basis.

3. Petitioners do not challenge or seek a rehearing on the matters discussed and determined in the said decision. Petitioners do seek a determination of an issue not discussed and determined in said decision but integrally involved in the case.

4. Properly this is a petition requesting this Court to consider and decide an undetermined issue rather than a petition for a rehearing. Petitioners do not ask for a rehearing on the Court's determination that the I. A. M. contract was properly abrogated because of alleged assistance, or on the Court's determination that the Board acted properly in refusing to investigate Petitioners' claim to a change in its representation situation. Petitioners request merely that the Court consider their arguments respecting the validity and propriety of the Board's unit determination under which it ordered the employer to bargain exclusively with a rival organization in an industrial unit which assimilated the craft unit requested by Petitioner. These arguments the Court has deemed it unnecessary to pass upon. The Court stated in this respect as follows:

> "By Sec. 8(3) of the Act discrimination upon the basis of union membership constitutes an unfair labor practice unless made because of a valid closed-shop contract. But that section authorizes an order under Sec. 10 abrogating such a contract with a labor organization which has been assisted by unfair labor practices. The presence of such practices in this case justified the Board's conclusion that petitioner did not represent an uncoerced majority of the toolroom employees.

Secs. 7, 8(1). This conclusion makes it unnecessary to pass upon the scope of the Board's power to determine the appropriate bargaining unit under Sec. 9(b)."

5. Petitioners feel that the determination that it is unnecessary to pass upon the unit issue was an oversight on the part of the court. It is true that the first of the two Board orders from which appeal was taken—the order abrogating the I. A. M. toolroom contract—was predicated on two conclusions, (1) that the I. A. M. received assistance in obtaining its necessary majority, and (2) that the unit which the contract covered was inappropriate. It is likewise true that a finding that assistance was given would render unnecessary a consideration of the other reason set forth by the Board. However, there are two Board orders involved in this case, and the unit determination is an integral part of both. The determination of the validity of the order abrogating the contract does not end the significance or relevance of the unit determination in respect to the other order herein complained of, which required the employer to deal exclusively with the U. A. W. on the production unit basis. On the contrary, the Board's unit determination was an integral and indispensable part of its order requiring the employer to recognize the U. A. W. as *exclusive* agent of all production employees, *including* the tool and die room employees. A specific finding that the production unit was the sole appropriate unit in the plant, and a specific determination that the tool room unit requested by Petitioners was inappropriate, was a necessary prerequisite to an order that the employer deal exclusively on the production unit basis, to the exclusion of the craft. Without such preliminary determination it would not only have been impossible for the Board to order the employer to deal on a particular basis, but it would have been impossible to find that the employer had failed to bargain on

a particular basis, violating Section 8(5) of the Act; for there can exist no necessity to bargain unless there likewise exists an appropriate unit in which to bargain. The one must assume the other.

6. There can be no question but what Petitioners have appealed from the order requiring the employer to deal exclusively with the U. A. W. on the all-inclusive production unit basis as well as the order abrogating the toolroom contract. This Court has specifically so stated (second paragraph of its decision) where it says that Petitioners have appealed from "those portions of the order which direct the employer to cease and desist from giving effect to its closed-shop contract with Petitioner and to bargain exclusively with U. A. W." See likewise paragraph 22 of Petitioners' Petition to Review in the Circuit Court (R. 6) and Petitioners' Brief, Statement of Case (pages 2 and 3), Issues Presented (page 8), Summary of Argument (page 12). Likewise, it was indicated both in the foregoing places in the Record and Brief and in the following places in the Brief that the Board's unit determination was challenged because on it was predicated the Board's order requiring the employer to deal on an industrial and not a craft basis: Brief, pages 27, 29, 35, 36, 39, 40.

7. Further, as is indicated on page 32 of Petitioner's Brief, the complaint against the Board's unit determination, and arguments in support of such complaint, can assume the validity of the Board's finding of assistance and the consequent order invalidating the closed-shop contract. While the validity of the contract may depend on the appropriateness of the unit, the appropriateness of the unit does not depend on the validity of the contract.

8. As a further reason for the necessity for a determination on the unit issue it should be noted that the com-

plaint case had been consolidated with a representation proceeding in which the unit question was the principal issue, and a joint hearing was conducted thereon before the Board (R. 327). While it is true that the Board dismissed the U. A. W. representation petition, this was not done because the Board deemed there was no merit in such petition, for it certified as appropriate the unit requested by the U. A. W. in its petition by its order to bargain. Rather it was dismissed because, as stated by the Board (R. 361), "it is not necessary to consider the Petition of the U. A. W. for certification of representation in view of our findings in Section III(c) above as to the appropriate bargaining unit and the designation of the U. A. W. by a majority of the Respondent's employees in the appropriate unit as their representatives for the purposes of collective bargaining." Further proceedings on the U. A. W. petition would have been completely superfluous in view of the order requiring the employer to deal exclusively with the U. A. W. in the unit requested by it in its petition, thereby granting all the petition had asked.

9. From the foregoing it is clear that the Board's unit determination is the foundation of the Board's order requiring the employer to deal with the U. A. W. on an industrial unit basis, to the complete exclusion of the toolroom or craft unit. It is submitted that the Court acted inadvertently in assuming that the unit determination had relevance only to the order abrogating the contract and, having found assistance, in considering it unnecessary to pass upon the unit question. Petitioners consider the unit question the most important issue in the case. This is the first time that any aspect of the craft versus industrial unit controversy between the American Federation of Labor and the C. I. O., and the Board's determinations thereon,

have been before this Honorable Court for consideration. It is of utmost and vital importance to petitioners, and to all other organizations affiliated with the American Federation of Labor, that a determination respecting the extent of the Board's powers in prescribing bargaining units be obtained.

10. Briefly, petitioners' argument in respect to the unit question is as follows: The Board admits that tool-room employees, consisting of skilled tool and die makers, are ordinarily an appropriate bargaining unit, but states that employer interference in the tool room organizing campaign renders the unit inappropriate. The Board further states that the organizing policy of the I. A. M., as prescribed in its constitution, whereby it organized skilled machine workers in one local and unskilled machine workers in another local, rendered its claim for a smaller unit artificial.

In prescribing bargaining units, the Board customarily looks to such factors as training, skill, aptitude, mutuality of interests and historical development. The Board has found in all other cases that these factors combine to make tool and die workers appropriate craft units. If this is so, can an employer's activities, over which a union has no control, in any way change these factors, or make them any less determinative of the unit question? Do not such considerations still exist after, as well as before, any alleged unfair practices? The Board, seemingly, would put the determination of the unit in the employer's hands; for the employer, by simulated preference or assistance, could render invalid any unit requested.

Further, the Board's determination that the I. A. M.'s organizing policies make its claim for a craft unit artificial is arbitrary and constitutes an outrageous interference with the internal affairs of labor organizations. There is no

reason why such policy should make a craft unit any the less appropriate.

Section 7 of the Act gives employees the right to select a representative, or type of representative, of their own choosing. In accordance with this mandate, the Board has laid down its so-called Globe doctrine, whereby, in all cases where conflicting claims are made as to two possibly appropriate units, it will hold an election to permit the employees themselves to decide which type of unit they prefer. The Board in this case has refused even to permit the skilled tool room employees to indicate by vote whether they want a craft or industrial labor organization to represent them. If the Board feels that employer practices might have affected the choice, it should hold an election, as is its practice in other similar cases, at such time as the effect of the practices have abated or worn off. To this end, the Board can issue appropriate orders, require the posting of notices, and the like. Instead, the Board has destroyed the unit by prescribing the C. I. O. as the exclusive representative in the larger, all-inclusive unit, pursuant to which an exclusive contract was entered into by the C. I. O. Thus, for all practical purposes, the I. A. M. is effectively precluded from any chance of representing the tool room employees. The C. I. O. certification stands for a year, and after an exclusive contract has been entered into it is extremely difficult, as a practical matter and in view of the Board's decisions, thereafter to obtain a craft unit determination and win an election.

WHEREFORE, petitioners respectfully pray this Honorable Court that it grant the rehearing requested herein; that it consider petitioners' arguments in respect to the unit question as set forth on pages 27 to 40 of their brief; and that it proceed to a determination on the all-important unit issue in the present case in connection with a determination of

the validity of the Board's order directing the employer to deal exclusively with the U. A. W. on a plant-wide basis.

Respectfully submitted,

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
Counsel for Appellants.

Dated, December 4, 1940.

736 Bowen Building, Washington, D. C.

BLANK PAGE

BLANK PAGE

SUPREME COURT OF THE UNITED STATES.

No. 16.—October Term, 1940.

International Association of Machinists; Tool and Die Makers Lodge No. 35, etc., Petitioners, *vs.* National Labor Relations Board.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[November 12, 1940.]

Mr. Justice Douglas delivered the opinion of the Court.

There are two questions here for decision: (1) whether on the facts of this case the National Labor Relations Board was without authority in finding that an industrial unit was appropriate for collective bargaining purposes to the exclusion of a craft unit; and (2) whether the Board had authority to require the employer to bargain with that industrial unit, despite a claim submitted to the Board by the craft unit before the order issued that the latter then had been designated by a majority of all the employees. We granted certiorari because of the importance of these questions in the administration of the National Labor Relations Act (49 Stat. 449) and because of an asserted conflict between the decision below (110 F. (2d) 29) and *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49, on the second question.

The Board found, in proceedings duly had under § 10 of the Act, that the employer, Serrick Corporation, had engaged in unfair labor practices within the meaning of the Act. It ordered the employer to cease and desist from those practices and to take certain affirmative action. More specifically, it directed the employer to cease giving effect to a closed-shop contract with petitioner[1] covering the toolroom employees; to deal with U.A.W, an industrial unit,[2] as the exclusive bargaining agent of its employees, including the toolroom

[1] Petitioners, labor organizations affiliated with the American Federation of Labor, are treated herein in the singular.

[2] United Automobile Workers of America, Local No. 459 (herein called U. A. W.) is affiliated with the Congress of Industrial Organizations (C. I. O.).

men; to desist from various discriminatory practices in favor of petitioner and against U.A.W.; and to reinstate and make whole certain employees who had been improperly discharged. The employer has complied with the Board's order. But petitioner, an intervener in the proceedings before the Board, filed a petition in the court below to review and set aside those portions of the order which direct the employer to cease and desist from giving effect to its closed-shop contract with petitioner and to bargain exclusively with U.A.W. The court below affirmed the order of the Board.

Abrogation of petitioner's closed-shop contract. The Board found that the closed-shop contract between petitioner and the employer was invalid under § 8(3) of the Act[3] because it had been "assisted" by unfair labor practices of the employer, because petitioner did not represent an uncoerced majority of the toolroom employees at the time the contract was executed, and because for this and other reasons it was not an appropriate bargaining unit. We think there was substantial evidence that petitioner had been assisted by unfair labor practices of the employer and that therefore the Board was justified in refusing to give effect to its closed-shop contract.

Since the court below has confirmed the findings of the Board there is no need to review the evidence in detail. *National Licorice Co.* v. *National Labor Relations Board,* 309 U. S. 350, 357. It is clear that the employer had an open and avowed hostility to U.A.W. It is plain that the employer exerted great effort, though unsuccessfully, to sustain its old company union, the Acme Welfare Association, as a bulwark against U.A.W. And it is evident that the employer, while evincing great hostility to U.A.W. in a contest to enlist its production force, acquiesced without protest in the organization by petitioner of the toolroom employees. The main con-

---

[3] Sec. 8(3) provides:

"It shall be an unfair labor practice for an employer— . . .

"(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made."

tested issue here is narrowly confined. It is whether or not the employer "assisted" the petitioner in enrolling its majority.

Fouts, Shock, Dininger, Bolander, Byroad and Baker were all employees of the toolroom. Four of these—Fouts, Shock, Byroad and Bolander—were old and trusted employees. Fouts was "more or less an assistant foreman", having certain employees under him. Shock was in charge of the toolroom during the absence of the foreman. Dininger and Bolander were in charge of the second and third shifts respectively, working at night. Prior to mid-July, 1937, they had been actively engaged on behalf of the company union. When it became apparent at that time that the efforts to build up that union were not successful, Fouts, Shock, Byroad and Bolander suddenly shifted their support from the company union to petitioner and moved into the forefront in enlisting the support of the employees for petitioner. The general manager told Shock that he would close the plant rather than deal with U.A.W. The superintendent and Shock reported to toolroom employees that the employer would not recognize the C.I.O. The superintendent let it be known that the employer would deal with an A.F. of L. union. At the same time the superintendent also stated to one of the employees that some of the "foremen don't like the C.I.O." and added, with prophetic vision, that there was "going to be quite a layoff around here and these fellows that don't like the C.I.O. are going to lay those fellows off first." During working hours, Byroad conducted a straw vote among the employees and under the direction of Fouts and Shock left the plant to seek out an organizer for petitioner. Fouts solicited among workmen in the toolroom stating that his purpose was to "beat" the U.A.W. For a week preceding August 13, Shock spent much time, as did Byroad, going "from one bench to another soliciting" for petitioner. Baker likewise solicited. Dininger offered an employee a "good rating" if he would join petitioner. Not less than a week before August 13, the personnel director advised two employees to "join the A. F. of L." Byroad spent considerable time during working hours soliciting employees, threatening loss of employment to those who did not sign up with petitioner and representing that he was acting in line with the desires of the toolroom foreman, McCoy. This active solicitation for petitioner was on company time and was made openly in the shop. Much of it was made in the presence of the toolroom foreman, McCoy, who clearly knew what was being done. Yet the freedom

allowed solicitors for petitioner was apparently denied solicitors for U.A.W. The plant manager warned some of the latter to check out their time for a conference with him on U.A.W. and questioned their right to discuss U.A.W. matters on company property. The inference is justified that U.A.W. solicitors were closely watched, while those acting for petitioner were allowed more leeway.

Five U.A.W. officials had been discharged in June, 1937, because of their union activities. The known antagonism of the employer to U.A.W. before petitioner's drive for membership started made it patent that the employees were not free to choose U.A.W. as their bargaining representative. Petitioner started its drive for membership late in July, 1937, and its closed-shop contract was signed August 11, 1937.[4] On August 10, 1937, the U.A.W., having a clear majority of all the employees, presented to the employer a proposed written contract for collective bargaining. This was refused. On August 13, 1937, all toolroom employees who refused membership in petitioner, some 20 in number, were discharged. On August 15, 1937, the management circulated among the employees a statement which, as found by the Board, was a thinly veiled attack on the U.A.W. and a firm declaration that the employer would not enter into any agreement with it.

Petitioner insists that the employer's hostility to U.A.W. cannot be translated into assistance to the petitioner and that none of the acts of the employees above mentioned, who were soliciting for petitioner, can be attributed to the employer.

We disagree with that view. We agree with the court below that the toolroom episode was but an integral part of a long plant controversy. What happened during the relatively brief period from late July to August 11, 1937, cannot properly be divorced from the events immediately preceding and following. The active opposition of the employer to U.A.W. throughout the whole controversy has a direct bearing on the events during that intermediate period. Known hostility to one union and clear discrimination against it may indeed make seemingly trivial intimations of preference for another union powerful assistance for it. Slight suggestions as to the employer's choice between unions may have telling effect among men who know the consequences of incurring that employer's strong displeasure. The freedom of activity permitted one group and the

[4] The contract, though dated August 6, 1937, was actually executed on August 11, 1937.

close surveillance given another may be more powerful support for the former than campaign utterances.

To be sure, it does not appear that the employer instigated the introduction of petitioner into the plant. But the Board was wholly justified in finding that the employer "assisted" it in its organizational drive. Silent approval of or acquiescence in that drive for membership and close surveillance of the competitor; the intimations of the employer's choice made by superiors; the fact that the employee-solicitors had been closely identified with the company union until their quick shift to petitioner; the rank and position of those employee-solicitors; the ready acceptance of petitioner's contract and the contemporaneous rejection of the contract tendered by U.A.W.; the employer's known prejudice against the U.A.W. were all proper elements for it to take into consideration in weighing the evidence and drawing its inferences. To say that the Board must disregard what preceded and what followed the membership drive would be to require it to shut its eyes to potent imponderables permeating this entire record. The detection and appraisal of such imponderables are indeed one of the essential functions of an expert administrative agency.

Petitioner asserts that it had obtained its majority of toolroom employees by July 28, 1938, and that there was no finding by the Board that that majority was maintained between then and the date of execution of the closed-shop contract by unfair labor practices. In this case, however, that is an irrelevant refinement. The existence of unfair labor practices throughout this whole period permits the inference that the employees did not have that freedom of choice which is the essence of collective bargaining. And the finding of the Board that petitioner did not represent an uncoerced majority of toolroom employees when the closed-shop contract was executed is adequate to support the conclusion that the maintenance as well as the acquisition of the alleged majority was contaminated by the employer's aid.

Petitioner attacks the Board's conclusion that its membership drive was headed by "supervisory" employees — Fouts, Shock, Dininger and Bolander. According to petitioner these men were not foremen, let alone supervisors entrusted with executive or directorial functions, but merely "lead men" who by reason of long experience were skilled in handling new jobs and hence directed the set-up of the work. Petitioner's argument is that since these

men were not supervisory their acts of solicitation were not coercive and not attributable to the employer.

The employer, however, may be held to have assisted the formation of a union even though the acts of the so-called agents were not expressly authorized or might not be attributable to him on strict application of the rules of *respondeat superior*. We are dealing here not with private rights (*Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261) nor with technical concepts pertinent to an employer's legal responsibility to third persons for acts of his servants, but with a clear legislative policy to free the collective bargaining process from all taint of an employer's compulsion, domination, or influence. The existence of that interference must be determined by careful scrutiny of all the factors, often subtle, which restrain the employees' choice and for which the employer may fairly be said to be responsible. Thus where the employees would have just cause to believe that solicitors professedly for a labor organization were acting for and on behalf of the management, the Board would be justified in concluding that they did not have the complete and unhampered freedom of choice which the Act contemplates.[5] Here there was ample evidence to support that inference. As we have said, Fouts, Shock, Dininger and Bolander all had men working under them. To be sure, they were not high in the factory hierarchy and apparently did not have the power to hire or to fire. But they did exercise general authority over the employees and were in a strategic position to translate to their subordinates the policies and desires of the management. It is clear that they did exactly that. Moreover, three of them—Fouts, Shock and Bolander—had been actively engaged during the preceding weeks in promoting the company union. During the membership drive for petitioner they stressed the fact that the employer would prefer those who joined petitioner to those who joined U. A. W. They spread the idea that the purpose in establishing petitioner was "to beat the C. I. O." and that the employees might withdraw from the petitioner once this objective was reached. And in doing these things they were emulating the example set by the management. The conclusion then is justified that this is not a case where solicitors for one union merely engaged in a zealous member-

[5] See Consumers Power Co. *v.* National Labor Relations Board, 113 F. (2d) 38, 44. Cf. Swift & Co. *v.* National Labor Relations Board, 106 F. (2d) 87, 93.

ship drive which just happened to coincide with the management's desires. Hence the fact that they were *bona fide* members of petitioner did not require the Board to disregard the other circumstances we have noted.

By § 8(3) of the Act discrimination upon the basis of union membership constitutes an unfair labor practice unless made because of a valid closed-shop contract. But that section authorizes an order under § 10 abrogating such a contract with a labor organization which has been assisted by unfair labor practices. The presence of such practices in this case justified the Board's conclusion that petitioner did not represent an uncoerced majority of the toolroom employees. Secs. 7, 8(1). This conclusion makes it unnecessary to pass upon the scope of the Board's power to determine the appropriate bargaining unit under § 9(b).

Alleged change in status of petitioner. Petitioner challenges the order directing the employer to bargain exclusively with U. A. W., on the ground that prior to the issuance of the order petitioner had obtained an overwhelming majority of the production employees and had so notified the Board. Petitioner made no showing at the hearing that a majority of the employees had shifted to it after the employer refused to bargain with U. A. W. Nor did it seek leave from the court below to adduce such additional evidence pursuant to § 10(e). Nevertheless it contends that the Board on receipt of the notification should have ordered an election or at least have made an investigation.

We agree with the court below that the Board in failing to act on this request did not commit error. This was not a certification proceeding[6] under § 9(c); it was an unfair labor practice proceeding under § 10. Where as a result of unfair labor practices a union cannot be said to represent an uncoerced majority, the Board has the power to take appropriate steps to the end that the effect of those practices will be dissipated. That necessarily involves an exercise of discretion on the part of the Board—discretion involving an expert judgment as to ways and means of protecting the freedom of choice guaranteed to the employees by the Act. It is for the Board not the courts to determine how the effect of prior unfair

[6] U. A. W. did in fact file a petition for certification under § 9(c). But this was dismissed by the Board since it found for reasons stated that U. A. W. was the appropriate bargaining unit.

END

assisted by the Company and did not represent an uncoerced majority of the toolroom employees (R. 346–347).[8]

Petitioners contend further that there were no subsequent unfair labor practices which enabled the I. A. M. to *retain* its majority, that there is no evidence to support such an inference, and that the Board made no such finding (Br. p. 25). The Board found that "inasmuch as the membership of the I. A. M. must be deemed vitiated by the interference of the [Company] in the solicitation of such membership, the I. A. M. did not represent an uncoerced majority of the toolroom employees at the time of the execution of the closed-shop contract" (R. 346). This finding is ample. When extensive and intense unfair labor practices are

[8] Petitioners' assertion that "there is no finding by the Board that there were any unfair practices of any kind on the part of the employer assisting the I. A. M. prior to the time the I. A. M. had obtained a majority membership on July 28, 1937" (Pet. Br., p. 25), is inaccurate. As the above quotation from the Board's findings indicates, the Board determined that the Company "coerced and induced its toolroom employees to establish the I. A. M. local" (R. 346). The unfair practices occurred in large measure prior to July 28—the attempt to foist the Association on the employees; the discharges of U. A. W. leaders; the announcements that the Company would not recognize the U. A. W. but would recognize the A. F. of L.; Superintendent Shimer's representations to employees of the toolroom on July 26 that C. I. O. men would be laid off and that the Company would never accept the C. I. O. but would willingly deal with the A. F. of L.—had all occurred before any employee of the Company joined the A. F. of L.

found, it is a fair inference from the findings that both the acquisition of a majority by the assisted union and the retention thereof resulted from the unfair labor practices. The finding that on August 11 the I. A. M. did not represent an uncoerced majority is an accurate summary of the effects of the unfair labor practices.

The employer conduct found in this case differs in no significant respect from that in other cases where findings that employee freedom of choice was destroyed have been approved by the courts.[9] Petitioners' challenge to the efficacy of such unfair labor practices to deny freedom of choice goes to the very basis of the Act. What petitioners really request is an exception, in their case, to the usual inference: they have conceded that the Company's activities on behalf of the Association—differing neither in kind nor degree from the Company's subsequent activity on behalf of the I. A. M.—precluded freedom of choice (R. 407, 332–334, 361). The distinction appears to rest entirely upon the nature of the organization favored by the employer. The Act recognizes no such dis-

[9] *E. g.*, *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 250, 262; *National Labor Relations Board* v. *Bradford Dyeing Association* (*U. S. A.*), 310 U. S. 318; *National Labor Relations Board* v. *The Falk Corporation*, 308 U. S. 453; *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8); *National Motor Bearing Co.* v. *National Labor Relations Board*, 105 F. (2d) 652 (C. C. A. 9); *Swift & Co.* v. *National Labor Relations Board*, 106 F. (2d) 87 (C. C. A. 10).

tinction. *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197. As the Board found, and the court below agreed (R. 346, 394, 399–400), the coercion and interference which made up the Company's assistance to the I. A. M. prevented that organization's designation by the employees from constituting the free designation which the Act requires.

B

THE COMPANY WAS PROPERLY HELD RESPONSIBLE FOR THE ACTIVITIES OF THE SIX EMPLOYEES WHOSE "SUPERVISORY" STATUS IS CHALLENGED BY PETITIONERS

In addition to those acts of assistance, described above, for which petitioners concede that the Company was responsible, the activities of Fouts, Shock, Bolander, Dininger, Byroad, and Baker further support the Board's findings of employer assistance to the I. A. M. As we have stated (note 4, pp. 13–14, *supra*), the Board found that the Company was answerable for the conduct engaged in by the four first named above, and the court below held that, in assisting the I. A. M., Byroad and Baker likewise acted on behalf of the Company. In demonstrating the correctness of these holdings, we shall first briefly review the authority of the employees in question and shall then discuss the principles which, we believe, should control determination of employer responsibility under the Act for activities of employees.

Fouts, Shock, Bolander, and Dininger each directed groups of machinists in their work (R. 23,

40, 43, 44). Fouts was in charge of the "roll department," had authority to determine whether or not the men under him were suitable for a particular job, and was regarded by the employees under him as a "boss" or "assistant foreman" (R. 23–24, 30, 44, 54). Shock was in charge of the entire toolroom during the absence of Foreman McCoy during the day shift (R. 34, 44, 45). It was Shock who instructed Byroad to inform the employees during working hours of the execution of the closed-shop contract with the I. A. M. (R. 126). Dininger and Bolander were referred to in the testimony as "foremen" (R. 40, 42, 43), and McCoy testified that they were in charge of the second and third shifts, respectively, which worked at night; McCoy worked only during the day (R. 114–115). According to McCoy, Dininger had the power to "lay off" men, though apparently not to discharge them (R. 111). Personnel Director Lewis testified that Dininger and Bolander had the power to recommend employees for hire and discharge (R. 77). As the court below pointed out, "McCoy himself had little, if any, further power. According to all the evidence, 'hiring and firing' was the function primarily of Lewis, more rarely of his superiors. A suggestion for employment or discharge by foremen and subforemen so closely connected with management is as potent, practically, as the power to 'hire and fire'" (R. 395).

We do not think that the question may be accurately phrased, as petitioners phrase it, in terms of whether Fouts, Shock, Bolander, and Dininger

were "supervisory" employees (Br. 14, *et seq.*). Whether an employer is answerable for acts of coercion and interference by his employees should not be determined by whether the employees may be labelled as "supervisory."[10] The proper test of employer responsibility is whether the employer has fulfilled his affirmative obligation to prevent use of his economic power over the employees in such manner as to interfere with their free exercise of the rights guaranteed by the Act. The controlling consideration is not any moral culpability on the part of the "employer"—or, in modern industry, on the part of any executive cog in an impersonal corporate setup—but the fact that the employees have been subjected to compulsions based upon the employer's economic power. The

[10] For this reason we do not, as does petitioner (Br. 18–19), regard the stipulation (R. 169–177) entered into at the hearing setting forth the names of all employees except "supervisory employees" and certain others, and containing the names of Fouts, Shock, Bolander, and Dininger, as determinative upon the question whether the company is answerable for the activities of these four. The stipulation shows on its face that its purpose was to list the employees according to their classification by the company on its pay roll (R. 169). The stipulation did not preclude the Board from proving at the hearing, in accordance with the principles for which we contend (*infra*, pp. 28–41), that the authority of certain of the employees enumerated in the stipulation and the circumstances under which they acted were such as to make the company responsible for their acts of interference and coercion. The interpretation which petitioner now seeks to place upon the stipulation was strongly urged in the court below; the court held that the four employees here in question "had actual, though not officially, nominal, supervisory capacity" (R. 394).

Board's obligation and function under the Act is to free employees in the future from the restraints which destroy freedom of self-organization; the concept of moral culpability on the part of the employer, which underlies any test based upon the presence or absence of express or implied "authorization," cannot limit exercise of the Board's power and duty to remove restraints which have been in fact imposed. See pages 34–35, *infra*.

Plainly, the fact that the actor has been vested by the employer with authority over other employees is a significant circumstance in determining whether the employees could reasonably regard his actions as those of the employer. The Act proscribes interference by employers because their "suggestions" and "advice" are backed by economic control over the employee's livelihood. By selecting an employee from among his fellows and vesting him with *indicia* of authority over them, the employer, in greater or less degree according to the authority conferred, lends his own prestige to the employee's actions in the eyes of the employees as a whole and strongly suggests that his power stands behind the employee's actions. The authority to hire or discharge, or to recommend such action, serves as an unequivocal hallmark of management representation, since it constitutes an actual investiture of capacity to exercise, or to bring about an exercise of, the employer's power in its most extreme form. Other powers are less plainly insignia of managerial status; but alone, or in combination, they may create the rea-

sonable impression which is the source of the employer's responsibility.

In modern industry the employer necessarily vests in a number of employees the power to direct and regulate the work of their fellows, that is, to give orders which are binding under plant discipline. Authorities in the fields of labor relations and economics are agreed that, to the employee, who rarely, if ever, comes into contact with higher officials in a large plant, his immediate "boss"—whether he be called "foreman," "supervisor," "straw boss," or "group leader"—represents the management's views and is the means whereby employee opinion can be molded in accordance with those views. "He is the interpreter of the management to the men as well as being the director of production itself." [11] As the means through which tangible contact is made, he "*is* the company." [12]

---

[11] Metropolitan Life Insurance Co., Policyholders' Service Bureau, *Foreman Training Plans* (1929), p. 5. See also Scott, Clothier, and Mathewson, *Personnel Management: Principles, Practices, and Points of View* (1931), pp. 43–44:

"The reason the foreman is the key man is this: regardless of what the administrative policies of the company may be, regardless of the extent to which the foreman properly interprets those policies, the man on the job looks up to him as the *management*. In the mind of the worker, management is fair or unfair in the degree in which his foreman is fair or unfair; intelligent or stupid as the foreman himself is intelligent or stupid; helpful and friendly as the foreman himself is helpful and friendly. The foreman has it in his power thus to modify the company's attitude toward its workers and, consequently, to formulate the workers' attitude toward the company."

[12] Tead and Metcalf, *Personnel Administration: Its Principles and Practice* (3rd ed., 1933), p. 151. See also Ander-

Employe-employer relations at the strawboss and foreman level must be watched carefully by management, for at that level human relations are almost inseparable from the job. It is through the immediate superior at that level that contact is established between the workman and management. It is at that point of contact that actual experiences and impressions occur. It is necessary therefore to train executives of this first outpost of management in the fundamentals of good industrial relations policies and practices, for they occupy the diplomatic post of management and, as such, are the moulders of worker opinion.[13]

---

son, *Industrial Engineering and Factory Management* (1928), p. 39: "At the furthest outpost of management, he *is* management to the workers."

[13] McMurry, *So You Handle People*, in *The Society for Advancement of Management Journal* (Nov. 1937), p. 168. See also Watkins and Dodd, *The Management of Labor Relations* (1938), pp. 436–437:

"The workers look upon him as the official representative of the company, and frequently he is the only representative with whom they ever come in touch. It is natural, therefore, that his words, actions, attitude, and methods should be accepted and interpreted by them as reflecting the established policies and practices of the firm. This may or may not be the case, but the fact that the workers believe it to be so is sufficient to cause misunderstanding."

In Reitell, *How to be a Good Foreman* (1927), p. 5, it is said of this type of employee: "* * * they are right up in the firing line, carrying to every worker the spirit and the underlying policy of the concern." Concerning the tendency of ordinary employees to follow an immediate leader's example, see Allen, *The Foreman and His Job* (1922), pp. 7–8.

By reason of this strategic location, th
vested with authority can with facili
the employer's directive and disciplinar
as to give sanction to the policies and de
he voices. Petty discriminations, each t
admit of successful appeal, may readily
ous discomfort upon opponents.[14] Co
the employees tend to "pattern their a
his, either because they respect him as a
because they wish to keep in his good
The ultimate responsibility is the empl
has clothed the "supervisor" with powe
hardship and has therefore lent to his
suggestions an implied threat of oppres

The Circuit Courts of Appeals have
held that under the Act an employer m
responsible for the activities of employee
he has vested authority over others, reg

---

[14] Slichter, *The Turnover of Factory Labor* (
The worker in modern industrial society has
live under "the many fears incidental to ty
capricious behavior on the part of those in au
especially of subordinate officials toward worker
direction * * *." W. L. MacKenzie King, *
Humanity (1935), pp. 129–130. "* * * h
somewhat at the mercy of a more or less whim
visor." Hepner, *Human Relations in Changi*
(1934), p. 124.

[15] National Metal Trades Ass'n, Committee o
Education, *Foremanship; Presenting the Funda*
ciples of Practical Foremanship (1928), pp. 3–4

[16] Compare U. S. Department of Labor, Bure
Statistics, Bulletin No. 634, *Characteristics*
Unions (Govt. Print. Off., 1935), pp. 8–9.

whether he has "authorized" those activities.[17] In opinions expressing the *ratio decidendi* of such holdings the controlling consideration has been whether the actor's authority and responsibilities, or other circumstances surrounding his actions, were such as might induce a reasonable belief on the part of the employees that he spoke for the employer. In *Consumers Power Co.* v. *National Labor Relations Board,* 113 F. (2d) 38, the Circuit Court of Appeals for the Sixth Circuit said (at p. 44):

---

[17] *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61, 64, 67 (C. C. A. 2); *National Labor Relations Board* v. *Griswold Mfg. Co.*, 106 F. (2d) 713, 721–722 (C. C. A. 3); *National Labor Relations Board* v. *A. S. Abell Co.*, 97 F. (2d) 951, 956 (C. C. A. 4); *Virginia Ferry Corp.* v. *National Labor Relations Board*, 101 F. (2d) 103, 106 (C. C. A. 4); *National Labor Relations Board* v. *Planters Mfg. Co.*, 105 F. (2d) 750, 754 (C. C. A. 4); *National Labor Relations Board* v. *Brown Paper Mill Co.*, 108 F. (2d) 867 (C. C. A. 5); *National Labor Relations Board* v. *Lane Cotton Mills*, 111 F. (2d) 814, 816 (C. C. A. 5); *H. J. Heinz Co.* v. *National Labor Relations Board*, 110 F. (2d) 843, 847 (C. C. A. 6); *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. (2d) 38, 44 (C. C. A. 6); *National Labor Relations Board* v. *Colten et al.*, 105 F. (2d) 179, 181 (C. C. A. 6); *National Labor Relations Board* v. *Ford Motor Co.*, decided October 8, 1940 (C. C. A. 6); *National Labor Relations Board* v. *Skinner & Kennedy Stationery Co.*, decided July 25, 1940 (C. C. A. 8); *National Labor Relations Board* v. *Christian Board of Publication*, decided July 25, 1940 (C. C. A. 8); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 786, 792 (C. C. A. 9); *Swift & Co.* v. *National Labor Relations Board*, 106 F. (2d) 87, 93 (C. C. A. 10). But *cf. Ballston-Stillwater Knitting Co.* v. *National Labor*

The contention that the several anti-union acts of Markle, and other supervisors, amounting to intimidation, were not authorized and were beyond the scope of authority entrusted to these men, must be rejected, not necessarily upon a strict application of the doctrine of *respondeat superior* as it has been applied in private controversies arising out of tort or contract. It has repeatedly been noted that the National Labor Relations Act contemplates the protection of the public rights which it creates and defines, and that its power to command affirmative action is remedial and not punitive. * * *

It would seem to us, in view of the public rights involved and the remedial nature of the proceeding designed for their preservation and protection, that acts of coercion and intimidation by supervisory employees may be restrained and their resumption interdicted by appropriate action of the Board, even in the absence of clear demonstration of prior authorization or subsequent ratification, at least where the circumstances are such as to induce in subordinate employees a reasonable apprehension that the acts condemned reflect the policy of the

---

Relations Board, 98 F. (2d) 758, 762 (C. C. A. 2); *National Labor Relations Board* v. *Swank Products, Inc.*, 108 F. (2d) 872, 875 (C. C. A. 3); *Link-Belt Co.* v. *National Labor Relations Board*, 110 F. (2d) 506, 511 (C. C. A. 7), certiorari granted, October 14, 1940, Nos. 235, 236, this Term; *Cupples Co., Mfrs.*, v. *National Labor Relations Board*, 106 F. (2d) 100, 115 (C. C. A. 8); *Kansas City Power & Light Co.* v. *National Labor Relations Board*, 111 F. (2d) 340, 351 (C. C. A. 8).

> employer. The right freely to organize without coercion or intimidation, is an empty one unless there is authority under the statutory scheme to safeguard it, and the necessity for doing so calls for more appropriate action by the employer than mere declarations of neutrality and impartiality, even though in good faith proclaimed. Further than that we need not go for purposes of present decision.

In *H. J. Heinz Co.* v. *National Labor Relations Board*, 110 F. (2d) 843 (C. C. A. 6, pending argument, No. 73, this Term), the same court noted that the company, although its supervisory staff was engaging in widespread activity against the "outside" union and in favor of the "inside" organization, took no steps to disclaim their activity or to proclaim to the employees the management's neutrality. The court concluded that (at p. 847):

> There was abundant evidence that the ordinary employees feared the disfavor of those from whom they were accustomed to taking orders. Since they were justified in believing that these supervisory employees were acting as petitioner's representatives, petitioner is responsible for what they did.

In *National Labor Relations Board* v. *Mathieson Alkali Works, Inc., decided* October 7, 1940 (C. C. A. 4), the court stated the controlling principles as follows:

> Even if the supervisory position of the employee is of minor character, the employer may be held responsible for his conduct if

> the surrounding circumstances are such as reasonably to justify the inference that it is an expression of the employer's policy or is approved by the employer.

Similarly, in *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61 (C. C. A. 2), modified and affirmed, 309 U. S. 629, the court held that the controlling facts bearing upon employer responsibility were that the employees involved "transmitted * * * orders to the men" and that, while they did not in fact have the power to discharge, "the men believed they had it and regarded them as foremen" (106 F. (2d), at 64). And in *Humble Oil & Refining Co.* v. *National Labor Relations Board*, 113 F. (2d) 85 (C. C. A. 5), the court emphasized that an employee vested by the employer with authority over the other employees "appeared to be speaking in the exercise of his authority," even though in fact acting in violation of unpublicized instructions (113 F. (2d), at 92).[18] The Circuit Court of Appeals for the Tenth Circuit has agreed that instructions issued

[18] In *National Labor Relations Board* v. *Whittier Mills Co.*, 111 F. (2d) 474, the Circuit Court of Appeals for the Fifth Circuit stated that the circumstances surrounding the "supervisor's" utterances would warrant a finding of employer coercion if they disclosed "some encouragement or ratification or such repetition as to justify the inference of a policy which they express" (111 F. (2d), at 479). The court went on to indicate that it would not restrict application of the "apparent authority" rule to those having certain types of authority, such as the power to hire and discharge. It suggested that "the management might very well issue

to "supervisors" but not made known to the employees cannot obviate employer responsibility if the instructions are not effective to prevent misuse of the employer's power; the employer is obligated to take "effective means to stop repeated violations of the Act." *Swift & Co.* v. *National Labor Relations Board,* 106 F. (2d) 87, 93 (C. C. A. 10).[19] See also *National Labor Relations Board* v. *Ford Motor Company,* decided October 8, 1940 (C. C. A. 6), where employer responsibility for antiunion violence by employees was based, in part, upon the fact that an official of the Company, who was in charge of the employees in question, expected the union's distribution of literature to be violently resisted, but "would take no action to prevent it, indulging the belief that if it occurred it would not be the fault of the Ford Motor Company."

In the present case, we submit, the authority of Fouts, Shock, Bolander, and Dininger, together

---

orders to all having any authority over other employees, that they shall say or do nothing respecting union affiliations" (*ibid.*). In *National Labor Relations Board* v. *Brown Paper Mill Co.*, 108 F. (2d) 867 (C. C. A. 5), the court held that where the employer has itself taken a position hostile to "outside" unions, it must assume responsibility for aid to an "inside" organization by "officers or employees, not officers, but having the confidence of the management, and acting for it * * *" (108 F. (2d), at 871).

[19] The employer's duty to take affirmative action to prevent the employees from being misled concerning the management's position was emphasized in *Kansas City Power & Light Co.* v. *National Labor Relations Board*, 111 F. (2d) 340 (C. C. A. 8), where the employer, while abandoning a plainly company-dominated Employees Representation Plan, failed

with the other circumstances surrounding their conduct, warranted the toolroom employees in believing that they spoke and acted on behalf of the management in conducting their extensive campaign to establish the I. A. M. in the toolroom and to keep the U. A. W. out. Their threats of discharge and their promises of a better efficiency rating (*supra*, p. 18) implied the exercise of the company's economic power, not their own. They purported to represent the management, impressing upon the employees the fact that the management would prefer men who joined the I. A. M. (R. 31, 34, 42, 90–91, 338–339, 391, 393); these representations and the inference that their vigorous campaign was undertaken upon orders from higher up, were the more certain of acceptance in view of the discriminatory discharges of U. A. W. members, and of the activities of Personnel Direc-

---

to announce to the employees "that the Plan was defunct" (111 F. (2d), at 346–347). The court stated that "it is not the motive influencing this company stand but the effect of such inaction upon the employees which is important in this situation." In *Westinghouse Electric & Manufacturing Co.* v. *National Labor Relations Board*, 112 F. (2d) 657 (C. C. A. 2), pending on petition for certiorari, the court held that, in view of the employees' probable understanding that a new "inside" organization was the successor of the old and enjoyed the favor accorded the old by the company, the fact that the company "had done nothing to mark the separation between the two" constituted the source of its responsibility (112 F. (2d) at 660–661). The same ground of decision was adopted in *Western Union Telegraph Co.* v. *National Labor Relations Board*, decided August 9, 1940 (C. C. A. 2).

tor Lewis, Superintendent Shimer, and Foreman McCoy (*supra,* pp. 16, 18–19), all making plain to the employees that the Company was determined to have the I. A. M., if it had to have any "outside" organization in the toolroom. These circumstances likewise establish that the Company must assume responsibility for the activities of Byroad and Baker, who worked in association with and pursuant to the direction of Fouts and Shock in carrying the Company's message to the employees (*supra,* pp. 17, 19). What they did, therefore, is "imputable to the company," as the court below held (R. 394, 389).

Petitioners contend that the circumstance that Fouts, Shock, Bolander, and Dininger were members of the I. A. M. precludes any inference that their activities were on behalf of the Company (Br., 20–21). Their activities, of course, predated their I. A. M. membership, but the short answer is that the example set by higher officials of the Company and the Company's ~~claim~~ plan preference for the I. A. M. "were enough to justify the inference that the subordinates' acts were more than spontaneous efforts of members to strengthen their own union." *Western Union Telegraph Co.* v. *National Labor Relations Board,* decided August 9, 1940 (C. C. A. 2). Realistically, the employees could not have believed that the very men who had openly espoused the Company's interests in the earlier drive to destroy the U. A. W. by promoting the Association, were now motivated, not by the Company's

desires, but by their own wish to exercise the right of self-organization (*cf.* R. 394). Indeed, statements by the employees in question that the sole purpose of establishing the I. A. M. was to "beat the C. I. O.," that the employees would be free to withdraw from the I. A. M. once this objective was attained, and that the Company "could tear up the contract" once "the trouble was settled" (*supra*, pp. 17–18, 20) conclusively rebut petitioners' argument that Fouts, Shock, Bolander, and Dininger were merely advancing the interests of their own union and that this was obvious to the employees.

The Board found that (R. 341) "Although a union may admit minor supervisory employees to its ranks, yet when, pursuant to the known desires of the employer, they engage in activities to establish a labor organization favored by the employer, they must be regarded as acting in behalf of the employer." In challenging the correctness of this finding, petitioners necessarily contend that coercive conduct may be legalized simply by enrollment of the supervisory staff in the union favored by the employer. The Act protects the supervisor's exercise of his right of self-organization as an employee; but it also protects the other employees from his exercise of the prestige and economic power of the employer in behalf of a particular labor organization. Eligibility for membership in the I. A. M. is no concern of the Board. But in

determining whether the actions of employees in positions of authority reasonably appeared to be taken by them as management representatives, the Board is not required to give conclusive weight to their affiliation with a particular union. That is but one factor affecting the impression made by their activities; here, we submit, that factor was plainly outweighed by the other circumstances indicating that they spoke for the management.[20]

---

[20] In *National Labor Relations Board* v. *Christian Board of Publication*, decided July 25, 1940 (C. C. A. 8), the court stated:

"The respondent must be held responsible for the acts of its supervisory employees even though those employees may be included in an appropriate unit for collective bargaining. If it were otherwise an employer could freely influence his employees' freedom of choice by this means yet claim immunity. As between respondent and its foremen the doctrine of respondeat superior applies and the responsibilities of that relationship are not suspended merely because the foremen chance to be included within the appropriate unit for collective bargaining."

A contention identical in all respects with petitioners' reliance upon these employees' membership in the I. A. M. was advanced, and rejected without discussion, in *Virginia Ferry Corp.* v. *National Labor Relations Board*, 101 F. (2d) 103 (C. C. A. 4). In *National Labor Relations Board* v. *Hearst*, 102 F. (2d) 658 (C. C. A. 9), the employer contested a finding that it was answerable for the activities of a supervisory employee in opposition to organizational activities of the Newspaper Guild, upon the ground that he was eligible for membership in the Guild and had been solicited to join it. The court, without specific mention of this contention, held that the Board's findings concerning the unfair labor practices were supported by substantial evidence (102 F. (2d), at 662).

C

AT THE TIME OF THE EXECUTION OF THE CLOSED-SHOP CONTRACT, THE I. A. M. WAS NOT THE FREELY DESIGNATED REPRESENTATIVE OF A MAJORITY OF THE TOOLROOM EMPLOYEES

The proviso to Section 8 (3) requires, as a prerequisite to validity of a closed-shop contract, that the labor organization entering into such a contract be "the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made." Apart from the question whether the toolroom employees constituted an appropriate unit (*infra,* pp. 43–59), the contract cannot stand because the I. A. M. was not the freely designated majority representative of the toolroom employees which Section 9 (a) envisages. The Act recognizes only majority representations which are freely obtained; coerced majorities plainly cannot vest in purported representatives the exclusive representation provided in Section 9 (a). The Board found that the I. A. M.'s membership was attributable to the Company's unfair labor practices and that that organization did not represent an uncoerced majority of the toolroom employees at the time the contract was executed (R. 346–347). These findings, supported by the subsidiary findings already discussed, furnish a further ground upon which the closed-shop contract is plainly invalid.

D

THE BARGAINING UNIT COVERED BY THE CLOSED-SHOP CONTRACT WAS NOT AN APPROPRIATE UNIT

Finally, in order for the contract to be valid under Section 8 (3), the toolroom employees, the unit "covered by such agreement when made," must have constituted an appropriate bargaining unit. Section 9 (b) vests in the Board the power to determine, under the circumstances of each case, what the appropriate unit is.[21] In the present case, a determination of the appropriate unit by the Board was necessary not only in passing upon the validity of the I. A. M. contract but also in ascertaining whether or not the Company violated Section 8 (5) in refusing the U. A. W.'s request for bargaining as the exclusive representative of all the production employees, including those employed in the toolroom. The Board found that the production employee unit was appropriate under the circumstances of this case and, consequently, that a unit composed of the toolroom employees alone was not appropriate (R. 346–347, 350–351). Unless this determination is overturned, the closed-shop contract is invalid by reason of the unit which it covers.

---

[21] Section 9 (b) provides as follows:

"The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

269393—40——4

In attacking the Board's finding upon the appropriateness of the bargaining unit, petitioners must sustain a heavy burden. Section 9 (b) (*supra,* note 21, p. 43) and its legislative history show clearly that the Board is not subject, in making determinations of this nature, to any inflexible rule; delimitation of the appropriate unit is "obviously for determination in each individual case." [22] The Board exercises, in this regard, "a broad power of discretion" and its determination is final unless "clearly arbitrary upon the point" *National Labor Relations Board* v. *Lund,* 103 F. (2d) 815, 819 (C. C. A. 8).[23]

The Board's power in this respect is but another instance of the broad discretionary powers which are frequently vested in administrative agencies having an expert knowledge and specialized ex-

---

[22] House Report No. 1147 (74th Cong., 1st Sess.), p. 22. It was there recognized that the question would "ordinarily arise as between two or more bona fide organizations competing to represent the employees."

[23] See also *National Labor Relations Board* v. *Whittier Mills Co.*, 111 F. (2d) 474, 477 (C. C. A. 5); *National Labor Relations Board* v. *Piqua Munising Wood Products Co.*, 109 F. (2d) 552, 554 (C. C. A. 6); *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, decided July 23, 1940 (C. C. A. 8); *Bussmann Mfg. Co.* v. *National Labor Relations Board*, 111 F. (2d) 783, 785 (C. C. A. 8); *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 143 (C. C. A. 9), cert. denied, 304 U. S. 575; *National Motor Bearing Co.* v. *National Labor Relations Board*, 105 F. (2d) 652 (C. C. A. 9); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 789 (C. C. A. 9).

perience in the field of their operation. *U. S. Navigation Co.* v. *Cunard S. S. Co.*, 284 U. S. 474, 485; *Federal Trade Commission* v. *R. F. Keppel & Bro.*, 291 U. S. 304, 314. Cf. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270.[24]

---

[24] Petitioners' statement that "The Railway Labor Act confers similar discretionary powers to prescribe units on the Railway Mediation Board" (Br., p. 27) is erroneous. The Railway Labor Act provides:

"The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of the Act." 45 U. S. C. A., § 152 (4); 48 Stat. 1186.

Thus the Railway Labor Act makes mandatory the craft or class unit. The language quoted by petitioner (Br. 28) from *Brotherhood of Railway & Steamship Clerks* v. *Nashville, C. & St. L. Ry. Co.*, 94 F. (2d) 97 (C. C. A. 6), concerned the Railway Mediation Board's resultant lack of authority to determine bargaining units and is inapplicable under the National Labor Relations Act, which expressly vests in the Board power to determine whether "the employer unit, craft unit, plant unit, or subdivision thereof" is appropriate in the particular case (Section 9 (b)). However, the abuse of discretion test has been applied to the Railway Mediation Board's exercise of powers which are granted it; thus the courts have refused to disturb exercises of that Board's power to "designate who may participate in the election and establish the rules to govern the election" (45 U. S. C. A., § 152 (9); 48 Stat. 1186) absent the required showing of arbitrariness. *Association of C. E. of A. T. & S. F. Ry. System* v. *Brotherhood of Ry. and S. S. Clerks*, 85 F. (2d) 152, 157 (C. C. A. 7) *Brotherhood of Locomotive Firemen and Enginemen* v. *Kenan*, 87 F. (2d) 651, 654 (C. C. A. 5); *Brotherhood of Railway Trainmen* v. *National Mediation Board*, 88 F. (2d) 757, 761 (App. D. C.); *Nashville, C. & St. L. Ry.* v. *Ry. Employees' Dept.*, 93 F. (2d) 340, 342 (C. C. A. 6), certiorari denied, 303 U. S. 649.

In the present case, the U. A. W. contended that a unit composed of all the production employees, including the toolroom employees but excluding buffers and metal polishers, supervisory and office employees, was appropriate.[25] The I. A. M. contended that the toolroom employees constituted a separate appropriate unit (R. 350). If the Board was not required to set the toolroom employees apart, no question arises concerning the appropriateness of the unit found.[26]

Where conflicting requests for a plant unit and for a craft unit are advanced, a difficult question is presented for resolution by the Board. In some cases factors such as the history of collective bar-

---

[25] The buffers and metal polishers have a closed-shop contract with the Company and all parties to the proceeding before the Board agreed that they should be excluded from the appropriate unit. Also no objection was made by any party to exclusion of supervisory and office employees, in accordance with the Board's normal practice. See *Third Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1939), pp. 180–185.

[26] Both the production and toolroom employees are eligible for membership in the I. A. M. as well as in the U. A. W., and both unions attempted to enroll the production and toolroom employees (R. 157–158). Some 20 of the 63 toolroom employees joined the U. A. W. (R. 173–175), thereby expressing their preference that the unit for collective bargaining be the plant rather than the craft unit. Eligibility for membership and the actual desires of employees as demonstrated by their free self-organization are both factors to which the Board normally and properly gives considerable weight in determining the propriety of the bargaining unit. *Third Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1939), pp. 163–167.

gaining in the plant, or similarity or dissimilarity in the objects of bargaining, may rather conclusively point to one unit or the other as better fitted "to insure to employees the full benefit of their right to self-organization and to collective bargaining * * *" (Section 9 (b), note 21, p. 43, *supra*).[27] Where factors such as these are evenly balanced, however, the Board has given determinative weight to the desires of the employees themselves, as evinced in their self-organization or as expressed in the polling booth. But here, too, a

[27] For a discussion of the various factors deemed relevant by the Board in considering the appropriateness of proposed bargaining units, see *Third Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1939), pp. 156–180. In the case at bar there had been no previous history of collective bargaining on either a craft or plant basis. The evidence showed that either basis was possibly appropriate. There is a close functional interdependence between the work done in the toolroom and that done in the production departments. The toolroom employees make and repair the tools and dies and repair the machinery used in the other departments (R. 75, 88, 135–136, 298, 350–351). It is not disputed that "primarily the toolroom is the beginning of production. Without the toolroom, without tools and dies there cannot be any production" (R. 88–89). The toolroom exists solely for purposes of the production departments; none of the tools and dies made are sold (R. 88). The toolroom is located in the center of the building housing all of the Company's employees; it is separated from the rest of the plant only by a wire fence having three gates, through which the toolroom employees are free to enter departments (R. 37–38, 89, 97, 129–130). The repair of machinery throughout the plant requires the toolroom employees to work in other departments (R. 27–28, 54). Maintenance workers also frequently come to the

further question has arisen: should the Board hold decisive the wishes of a majority of *all* the employees or the wishes of a majority of those who, it is contended, should be set aside from the others as a separate unit? Manifestly, neither majority can claim an unqualified right that their wishes be respected, to the exclusion of consideration of all other relevant circumstances (but compare Pet. Br., pp. 31–32). If the Board were required to give conclusive weight to the wishes of a minority in a proposed "employer unit" or "plant unit," the Board's power to determine appropriate units would in fact be vested in that minority.

To resolve conflicts between proposed craft and industrial units in the same plant, the Board propounded, in the exercise of its informed discretion, not as a matter required by the Act, the so-called Globe Doctrine, upon which petitioners rely.[28] See Cohen, *The "Appropriate Unit" under the National Labor Relations Act,* 39 Columbia Law Re-

---

toolroom in order to use special equipment (R. 133). On occasion, production workers come to the toolroom to have their tools repaired (R. 78–83, 96). This factor of functional interdependence, indicating the presence of common questions in the bargaining of all the employees, is given substantial weight under the Board's settled policy. *Third Annual Report, supra,* pp. 191–192; see *Matter of Acklin Stamping Co.*, 2 N. L. R. B. 872, 877. While the toolroom employees are more skilled and are generally paid a higher rate of pay than the production workers, some of the latter are better paid (R. 8, 99, 138–139).

[28] The Globe Doctrine takes its name from *Matter of Globe Machine & Stamping Co.*, 3 N. L. R. B. 294, the case in which it was first evolved and applied by the Board.

view 1110, 1128. This doctrine is a simple one: where two conflicting units, a craft unit and an industrial unit, are proposed, resolution of the conflict will ordinarily depend upon the freely expressed desires of a majority of the employees in the less inclusive unit. In other words, when a majority of a defined craft have made a free choice, that choice will be preferred over that made by a majority of all the employees seeking collective bargaining.[29] If their choice is to set themselves apart, the craft unit is found to be appropriate; if they freely choose to be included within the larger unit, an industrial unit including them is found to be appropriate.

In the present case, however, there was no free expression of desire for a separate unit by a majority of the toolroom employees. Membership in the I. A. M.'s toolroom lodge could not be accepted as such an expression because it was ob-

[29] See *Third Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1939), pp. 167–174. The Board stated (at p. 167) that the desire of the employees "has been given cardinal significance in cases where rival organizations have advanced different contentions as to the form of organization which should govern among a particular company's employees, and the circumstances of the case have been such that if either contention had been unopposed it would have been adopted. This situation has involved most commonly a dispute between one or more unions advocating organization along plant-wide lines, and one or more unions advocating organization along plant craft lines. In such situations, the Board has established the practice of considering the wishes of a majority of the employees in the craft group as to their inclusion in a plant-wide unit."

tained through the assistance of employer interference and coercion which destroyed freedom of choice among the toolroom employees (*supra*, pp. 13–26). The Board therefore found that the Globe Doctrine was not applicable (R. 351).[30] Absent the basis for the Globe doctrine, the Board found appropriate the more inclusive unit proposed by the U. A. W. (R. 350–351). The present case, therefore, represents no departure from the Globe doctrine. See Cohen, loc. cit., *supra*, p. 48.

The exact purport of petitioners' contention that it was arbitrary for the Board not to set the toolroom employees apart is not clear. Petitioners claim that the Board concedes the appropriateness of a unit composed only of the toolroom employees but maintains that employer interference "renders the unit inappropriate" (Br. pp. 11, 29, 30, 32–35). Neither the Board's findings nor our argument in the court below or here will stand this interpretation. Admittedly, the toolroom employees constitute a craft, as they ordinarily do; they would ordinarily, therefore, comprise an appropriate unit if a majority of them decided, without interference or coercion, that they wished to bargain separately.

---

[30] The Board's finding reads as follows (R. 351):

"While ordinarily we have regarded as controlling the free choice of a majority of the employees in a well-defined craft as to the form of organization they desire, in the present case the [Company's] conduct in influencing such choice precludes the application of this doctrine in the determination of the appropriate unit or units."

But this is not to say that they would have necessarily made up an appropriate unit had there been no interference by the Company; such an assertion is necessarily based upon an assumption that the choice which the employer compelled the men to make would have been made had he not interfered. No such assumption can be made.

Similarly, petitioners err in stating that "the Board has found in all other cases that these factors (training, skill, aptitude, mutuality of interests and historical development) combine to make tool and die workers appropriate craft units" (Pet. Br., pp. 11, 30–31, 32). The Board has considered these factors in determining that tool and die makers constitute a craft, that is, a well-defined group sufficiently separate in employee interest from other employees to make them a *possible* appropriate collective bargaining unit. But the Board's finding as to whether such craft is an appropriate collective bargaining unit has basically rested upon the freely expressed desire of a majority in the craft for or against a separate unit. Indeed, in the type of case to which petitioners refer, an election has preceded determination of the appropriate unit. In directing the election, the Board finds that either the craft unit or the industrial unit may be appropriate, depending upon the desires of a majority of the craft. The factors mentioned by petitioners do not serve, without more, to establish the appropriateness of the unit

claimed.[31] In other words, under the Globe Doctrine the existence of a well-defined craft is not a basis alone for holding the craft unit appropriate; the operative fact is the free desire of a majority of the craftsmen for a craft unit.

But, petitioners argue, assuming that membership in the I. A. M. was coerced and afforded no basis for a finding that the toolroom employees constituted an appropriate unit, the Board should have directed an election to be held after the effects of the unfair labor practices were dissipated, and thereby determined the desires of a majority of the toolroom employees (Br., pp. 34–35). The short answer lies in the fact that this was not a representation proceeding under Section 9 but an unfair labor practice case under Section 10. The Board had before it for determination the issue whether the Company had violated Section 8 (5) of the Act by refusing to bargain with the U. A. W. as the exclusive representative of all the production employees, including the toolroom employees. This involved a determination whether the U. A. W. represented a majority of the employees in an appropriate unit at the time of the refusal to bargain. At that time there was no uncoerced choice by a majority of the craft to set themselves

[31] For cases in which a so-called "Globe election" was held upon conflicting claims of craft and industrial units see *Fourth Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1940), pp. 86–87; *Third Annual Report of the National Labor Relations Board* (Govt. Print. Off., 1939), pp. 167–174.

apart from the industrial unit. Nor could the Board undertake to determine whether such a choice would have been made had no assistance been rendered to the I. A. M. by the Company. An election in 1938 could not demonstrate what unit was appropriate in 1937, even were it possible to hold a free election before compliance by the employer with an order remedying the unfair labor practices (see pp. 66–70, *infra*).

In other words, petitioners contend that even if there was no free desire by a majority of the toolroom employees for a craft unit, petitioners' organizational campaign with employer assistance prevented inclusion of the toolroom employees in *any* unit during 1937 and deprived the Board of power to determine whether the Company violated Section 8 (5) by refusing to bargain with the U. A. W. as the representative of a majority in a unit including those employees. This contention is plainly unsound. Unless a majority of the craft employees have freely elected to disassociate themselves from the other employees, there is no reason for the Board to deny effect to the free choice of a plant unit by a majority of all the employees, as evidenced by the U. A. W.'s conceded majority in this case. A substantial number of the toolroom employees were included in this majority (note 26, p. 46, *supra*). Nor may petitioners contend that all the employees should have been deprived of their right to bargain collectively simply because peti-

tioners were introduced into the plant with the employer's assistance and obtained a coerced membership among a craft. The Board's determination that the unit for which the U. A. W. sought to bargain was an appropriate unit was entirely reasonable in the absence of a free desire to the contrary on the part of a majority of the craft, entertained at the time of the refusal to bargain.[32]

In the last analysis, petitioners' position is that labor organizations claiming to represent crafts have an absolute right to have the units they favor approved as appropriate by the Board, regardless of whether or not the representation they claim has resulted from unfair labor practices. Thus, petitioners construe the Board's finding that the unit freely desired by a majority of all the employees in this case is appropriate, as "punitive" against the craft union and as operating "to destroy a craft unit" (Pet. Br., 34–36). Aside from the fact that the Act does not require the appropriateness of proposed craft units at all, much less under any and all circumstances, no one may demand recognition of a status obtained through a denial of rights guaranteed by public statute. *National Licorice*

[32] Petitioners' assertion that the Board must give conclusive weight even to a coerced choice by a craft majority lest the employer, by gratuitous favor to unwilling unions, be enabled to render an otherwise appropriate unit inappropriate (Br., pp. 32–35), surely is not pertinent upon the facts of this case. The Board is equipped to uncover such attempts, and has discretion under the Act appropriately to deal with them.

Co. v. *National Labor Relations Board,* 309 U. S. 350, 364–366. Further, the claim disregards the availability of the representation proceedings provided by section 9 of the Act, whereby a ready means is afforded for the determination of bargaining units and representatives freely desired by the employees (*infra,* pp. 74–76). The Board's order in this case, and the practice of the Board, leave open the way for future representation of the employees by the I. A. M., the U. A. W., or any other labor organization freely designated by a majority in any unit which may hereafter be found appropriate.[33] Petitioners' assertion that this is no

[33] The Board's order requiring the Company to cease giving effect to the closed-shop contract with the I. A. M. expressly provides that "nothing in this order shall preclude the respondent from hereafter making an agreement with the International Association of Machinists, or any other organization (not established, maintained, or assisted by any action defined in the National Labor Relations Act as an unfair labor practice) requiring as a condition of employment, membership therein, if such labor organization is the representative of the employees in an appropriate bargaining unit as provided in Section 9 (a) of said Act" (R. 363).

The Board's decisions likewise make it clear that at a later date the I. A. M. may come in and have its claim for a craft unit considered on the basis of the facts then existing; the Board's order in the present case will not bar a determination that a different unit is then appropriate. In *Matter of Pacific Greyhound Lines,* 9 N. L. R. B. 557, 573–574, the Board, speaking in respect to the effect to be given the results of a Globe election in a subsequent case said: "We find nothing in the Act which requires or supports the application of a principle analogous to that of the judicial doctrine of *res judicata* in matters involving a determination of the appropriate unit for collective bargaining purposes. Sec-

protection because of the Board's practice that "designation of a unit and certification of a representative therein" is binding for one year (Br., 35–36) ignores the fact that more than two years have elapsed since the Board issued its order and the Company complied with it. Further, the Board has never determined whether it will apply the one-year rule to an order remedying unfair labor practices under Section 10 (c), as distinguished from a certification of representatives pursuant to Section 9 (c).

In addition to the inapplicability of the Globe Doctrine as a basis for carving the toolroom employees out of the more inclusive unit, a majority of the Board found that since the I. A. M. was attempting to enroll all of the production employees, including the toolmen, on a plant unit basis, it could not be heard to maintain that the craft unit was appropriate (R. 351).[34] The record

---

tion 9 (b) of the Act empowers the Board to 'decide in each case' the appropriate unit and its guide in so doing, as therein stated, is 'to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act.' A prior decision in regard to whether a certain unit of employees is appropriate for purposes of collective bargaining is a circumstance, but not a decisive one, which the Board in the exercise of a sound discretion will consider should such question again present itself in a subsequent proceeding involving the representation of such employees."

[34] The third member of the Board, Chairman Madden, believed that this point was unnecessary for decision of the case and that no opinion should be expressed concerning it (R. 366).

shows that as early as August 10, prior to execution of the closed-shop contract on August 11 (*cf.*, Pet. Br., 37), the I. A. M. extended its organizational campaign from the toolroom employees to all the production employees (R. 156–157). Supporting the Board's finding that the creation of two I. A. M. locals, one for the toolroom employees and the other for the remainder of the production employees, "must be deemed artificial" (R. 351), is the fact that the membership cards signed by the employees designated the I. A. M., not the respective locals, to act as the bargaining representative (fol. 637; see R. 11). In the proceedings before the Board it was the I. A. M., not the respective locals, which claimed representation of the employees (R. 11–15, 327). MacDonald, an official of the Grand Lodge, not of either local, was the chief negotiator for the union in the bargaining between the I. A. M. and the Company (R. 343, 345). He took the leading part in obtaining the closed-shop contract covering the toolroom and signed it for the I. A. M., along with officials of the toolroom local (R. 10, 343, 345). He also conducted the bargaining concerning the production employees (Fol. 183–184, 318–320; Tr. 1528–1532). MacDonald, who represented the I. A. M. at the hearing before the trial examiner, there stated that if the more inclusive unit were held appropriate, the I. A. M. would bargain on behalf of all employees in that unit (R. 158–159).

This circumstance cast further doubt upon the validity of the assertion that, by enrolling in the I. A. M., the toolroom employees expressed a desire for the craft unit. Even had such membership been freely obtained, which it was not (*supra,* pp. 13–26, 42), the desire indicated was at least equivocal.[34a] And it was plainly proper for the Board to give weight, as it did (R. 351), to the free and unequivocal choice of the plant unit indicated by a substantial number of the toolroom employees in joining the U. A. W. (note 26, p. 46, *supra*). There was no history of collective bargaining by the craft; the toolroom employees had not theretofore organized themselves on the basis of a craft unit; and the I. A. M. was not organizing in such a way as to engage in craft bargaining. On the contrary, the I. A. M., along with the U. A. W., tacitly recognized the desirability of enrolling all of the employ-

[34a] An employee who joined the I. A. M. of his own free will—assuming that that was possible despite the Company's unfair labor practices—must have understood from the I. A. M.'s plant-wide campaign, that if that organization achieved recognition, it would, in collective bargaining with the Company, have the united force of all the production employees, including the toolroom employees, behind it. This is the primary consideration motivating choice by employees of the plant unit over the craft unit; labor organizations representing plant units frequently advance separate terms on behalf of particular classifications of workers, but this is not regarded as bargaining on behalf of a craft unit. The test, at least in the view of the employee, is whether all the employees or only the members of the craft stand behind the bargaining representative.

ees, including the toolroom employees, in order to achieve bargaining strength.

Petitioners assert (Br. 37–39) that it is the uniform practice of the I. A. M. to segregate employees such as the toolroom employees from production employees and to organize them into separate locals. But organization of separate locals is beside the point where the bargaining is jointly done for a composite unit. See note 34a, p. 58, *supra*. The I. A. M. has consistently sought to broaden the base of its jurisdiction. It has repeatedly advocated amalgamation of all metal trade labor organizations so as to strengthen, by broadening, the bargaining unit, has, in practice, joined with other such unions in bargaining on behalf of a broader unit, without the formality of amalgamation, and has frequently entered into contracts with employers covering tool and die workers along with production and other employees.[35]

---

[35] A. O. Wharton (President of I. A. M.), *Fifty Years of the Machinists Union*, in Labor Information Bulletin, U. S. Bureau of Labor Statistics, Vol. V, No. 5 (May 1938); *Proceedings of the 14th Convention of the International Association of Machinists* (1911), pp. 80, 137; *Proceedings of the 15th Convention, etc.* (1916), p. 83; *Proceedings of the 16th Convention, etc.* (1920), pp. 182–1901; *Proceedings of the 19th Convention, etc.* (1936), pp. 54–64, 162–164, 251, 278; Paragraph 7 of the I. A. M.'s constitution, 1911, see *Proceedings of the 14th Convention, supra*, pp. 13–14; *Machinists Monthly Journal* (official organ of I. A. M.) September 1937, p. 603 (Lockheed Aircraft contract); *ibid.*, December 1937, p. 829 (Continental Can contract); *ibid.*, October 1937, p. 672 (Portland Cement contract); *ibid.*,

In the present case, the I. A. M. plainly did not consider arbitrary a single unit which would permit all of the production employees to bargain through a single representative. That view was first advanced after the Board determined that the U. A. W., not the I. A. M., was the authorized representative in the plant unit. The source of peti-

---

September 1938, p. 681 (Ralph N. Brodie contract); *ibid.*, September 1938, pp. 733–734 (contracts in general).

Relevant to the question of the I. A. M.'s claimed adherence to craft unionism, as well as to petitioners' claim that in the present case the Board has been guilty of "outrageous interference with [the] internal affairs" of the I. A. M. (Br., 38–39), are the conflicting claims made before the Board in *Matter of Standard Forgings Corp.*, 26 N. L. R. B., No. 122, decided August 28, 1940. In that case petitions for certification were filed by a C. I. O. union and by the I. A. M. The I. A. M. contended that the appropriate unit should consist of "all production and maintenance employees employed in the departments known as the general machine shop, small machine shop, die turning department, die sinking department, sheet metal department, axle cutting department, axle turning department, and axle shed." Chicago Die Sinkers Local No. 1512 of the I. A. M. intervened and, in contravention of the claim advanced by its parent organization, contended that the die sinkers should be set apart as a separate appropriate unit. The I. A. M. opposed the Local's request for certification as representative of the die sinkers. The Board pointed out that its regular practice was to dismiss "proceedings wherein two unions subject to discipline by the same parent body have disagreed over the extent of their jurisdiction." In this case, although both the I. A. M. and Local No. 1512 were both affiliated with the same parent body (the A. F. of L.), the Board held that since the Local was chartered by and subordinate to the I. A. M., the I. A. M.'s opposition was conclusive upon the Local's claim.

tioners' complaint is not the breadth of the unit, but the identity of the representative.

Since the I. A. M. had been assisted by the Company's unfair labor practices, since the I. A. M. was not the freely designated representative of a majority of the toolroom employees, and since those employees did not constitute an appropriate bargaining unit, the closed-shop contract between the Company and the I. A. M. failed to satisfy any one of the three conditions imposed by the proviso to Section 8 (3) (pp. 12–13, *supra*). The contract was plainly invalid under the express terms of the Act.

E

THE ORDER REQUIRING THE COMPANY TO CEASE GIVING EFFECT TO ITS CLOSED-SHOP CONTRACT WITH THE I. A. M. IS VALID

The Board ordered the Company to cease and desist from giving effect to its closed-shop contract with the I. A. M. (R. 363). Continued operation of the contract would cause the Company to discriminate against employees in violation of the Board's order and of the Act. Since the contract is illegal, the order requiring the Company to cease enforcing it is plainly valid as an exercise of the Board's mandatory power to enjoin unfair labor practices, as well as of its affirmative power to effectuate the Act's policies by removing improper restraints upon the employees' exercise of their

rights. *National Licorice Co.* v. *National Labor Relations Board,* 309 U. S. 350; *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 236; *National Labor Relations Board* v. *National Motor Bearing Co.,* 105 F. (2d) 652, 660 (C. C. A. 9).

II

THE ORDER REQUIRING THE COMPANY TO BARGAIN COLLECTIVELY WITH THE U. A. W. AS THE EXCLUSIVE REPRESENTATIVE OF THE PRODUCTION EMPLOYEES IS VALID

Petitioners attack the order requiring the Company to cease and desist from refusing to bargain collectively with the U. A. W. (R. 363), and the notices provision (R. 365) insofar as it requires a statement that the Company will bargain with the U. A. W. (Pet. Br. 41–53). Petitioners do not deny that these provisions constitute the normally proper remedy for a refusal to bargain, as this Court and the Circuit Courts of Appeals have held. Instead, the basis of challenge in the instant case is that the Board was bound to withhold the normal remedy because petitioners filed with the Board, four days before issuance of its order, an affidavit and letter claiming that the I. A. M., not the U. A. W., then represented a majority of the production employees (R. 11–15).[36] The argument is

[36] The letter (R. 12) and petitioners' brief (p. 42) rely in part upon an asserted agreement for an election entered into between the Company and the U. A. W. in settlement of a suit in a state court to enjoin strike activities by the U. A. W.

that, while the U. A. W. was concededly the authorized representative of the employees at the time of the refusal to bargain (R. 352, 407–408) and while petitioners made no showing at the hearing of any majority shift in the period following the refusal to bargain, the bargaining order was nevertheless rendered improper by the assertion, on the eve of the Board's decision, that the U. A. W. had been replaced as the accredited representative. The court below rejected this contention, stating (R. 374–375):

> Notice of the I. A. M.'s claim of subsequent change was not given to the Board until four days prior to its decision. No effort was made, pursuant to Section 10 (e), to apply to a court for leave to adduce additional evidence. In addition to failure to

---

(R. 12). The agreement, to which the I. A. M. was not a party, provided that the employees should return to work and the strike be "suspended pending an election to be held at such time and place as the Labor Relations Board may determine" (R. 164–165). But thereafter, at the hearing before the trial examiner, it was stipulated that the U. A. W. had been designated by a majority of the employees (R. 175–176), rendering the election unnecessary, as the Board found (R. 357, note). The other consent election agreements in evidence (R. 165–168) were not completely executed because of disagreement concerning the appropriate unit and other matters (R. 356–358). The parties understood that if the record established majority representation by one of the unions in an appropriate unit, no election would be necessary (R. 78, 83). Petitioners' present contention that an election should have been held must rest solely upon its assertion, after the hearing, that a shift of majority had occurred, not upon any agreement of the parties.

exhaust this judicial remedy, two considerations support the Board's refusal to call an election in the present circumstances. First, there is nothing to indicate that the unfair practices, which the Board and (as will appear) we have found existed, were remedied until after the order was entered. Therefore, any shift in majority affiliation between the hearing and the decision, had it occurred, presumably must have been affected or effected by them. Furthermore, the case is not one in which the majority at the time of the hearing was doubtful or improperly constituted, as by the employer's aid or inclusion of ineligible members. Whatever may be the rule when such defects exist, in their absence the presumption arises that the freely established majority continues until the Board has an opportunity to make its decision. In its discretion it may hear additional evidence as to the majority's continued existence. But these presumptions, when sustained by the facts, should prevent its refusal to do so from being arbitrary, as against mere *ex parte* and self-serving assertions that a shift has occurred. Any other rule would make a merry-go-round of the Act, since like representations could be made in turn following each new one by the contending unions in order to prevent or delay a decision contrary to their interests, with no other result than to maintain the proceeding in a state of indefinite suspension and indecision. This view does no more than afford the

> Board a reasonable opportunity to perform its functions under the Act. It does not deprive employees of the power to select their representatives by choice of the majority. If conditions have changed and a majority now wish to join a local I. A. M., they may do so and call for an election.

The Board's position concerning asserted changes in majority representation following the commission of unfair labor practices was fully argued to the Court in *National Labor Relations Board* v. *Bradford Dyeing Association,* 310 U. S. 318.[37] The Court enforced the order requiring collective bargaining, stating (p. 340):

> In view of the substantial support in the evidence for the Board's findings that the company intimidated and coerced its employees and dominated the Federation, the Board properly concluded that "The unfair labor practices of the respondent cannot operate to change the bargaining representative previously selected by the untrammeled will of the majority."* And, accordingly, the Board was justified in its finding "that on April 4, 1937, and at all times thereafter, the T. W. O. C., pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in the appro-

[37] Brief for the National Labor Relations Board, No. 588, last Term, pp. 35–60; Reply Brief for the National Labor Relations Board, pp. 14–17.

priate unit for purposes of collective bargaining. * * *

*Cf. Texas & N. O. R. Co. *v.* Ry. Clerks, 281 U. S. 548, 557, 571, affirming 33 F. (2d) 13, affirming 24 F. (2d) 426; 25 id. 873; 25 id. 876, 877–8. [Footnote by the Court.]

The principle that a labor organization freely chosen by a majority of the employees as their bargaining representative is presumed to retain that status until the employees reject it of their own volition, discounting the effects of employer coercion, was established prior to the Act by the decision in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, affirming 33 F. (2d) 13 (C. C. A. 5), affirming 24 F. (2d) 426, 25 F. (2d) 873, 876.[38] The view that, despite apparent or "surface" repudiation of a majority representative induced by illegal employer action, the representative is presumed to retain such status until the employees freely select another representative or choose not to be represented, was adopted by the first National Labor Relations Board, with express reference to the remedial action sanctioned in the *Railway Clerks* case. *Matter of North Carolina Granite Corporation,* 1 (old) N. L. R. B. 89; *cf. Matter of Danbury & Bethel Fur Company,* 1 (old) N. L. R. B. 195. See also *Matter of Lyon Oil Refining Company,* Decisions of the Petroleum Labor Policy Board, p. 34. As this Court has recognized (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines,*

[38] See Brief for the National Labor Relations Board, No. 588, last Term, pp. 43–45.

Inc., 303 U. S. 261, 267), and as the legislative history clearly shows,[39] Congress, in enacting the present statute, relied upon the *Railway Clerks* decision and upon the principles stemming from that decision which had been adopted by administrative tribunals created to deal with labor problems.

Two main considerations constitute the foundation of this principle in a case such as the present one. Requiring an employer to recognize and negotiate with the representative with whom it has illegally refused to bargain is necessary, first, in order to dissipate the coercive effects of the unfair labor practices by restoring the right denied the employees and thus to effectuate the Act's fundamental purpose of insuring collective bargaining under free conditions; and, second, in order that the collective bargaining provisions of the Act shall not be rendered unworkable and unenforceable. We shall discuss these grounds separately.

1. Employees join labor organizations, and otherwise designate representatives, to secure collective bargaining. Accordingly, whether or not the employer recognizes and bargains with the agency selected by the employees is a decisive factor affecting the ability of that representative to secure or retain its constituents. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines,*

[39] Report of House Committee on Labor (H. Rept. No. 1147, 74th Cong., 1st Sess.), pp. 3–7, 15–18, 22, 24); Report of Senate Committee on Education and Labor (S. Rept. No. 573, 74th Cong., 1st Sess.), pp. 2, 9, 13, 16, 17.

Inc., 303 U. S. 261, 271; *cf. Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 568–569. Indeed, the natural and intended effect of a refusal to recognize and bargain with the employees' representative—to preclude the exercise of its principal and essential function—is to divert the employees to a second choice or to persuade them to abandon completely their collective bargaining objective by emphasizing the futility of any representation. An unlawful refusal to bargain with a freely chosen representative, like the illegal recognition of an employer-dominated organization for bargaining purposes, constitutes a "continuing obstacle to the exercise of the employees' right of self-organization and to bargain collectively through representatives of their own choosing." *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 275. For this reason, so long as a refusal to bargain lacks effective remedy and obstacle to free choice which it has created continues; hence any asserted shift away from the freely chosen representative cannot be regarded as the uninfluenced and voluntary action of the employees. The shift might not, and normally would not, have occurred if the representative first chosen had been recognized, as required by the Act. Since the Act proceeds upon the premise that conduct which it prohibits does interfere with freedom of choice, certainly any asserted change, or doubt upon the matter, must be held to be immaterial and be disregarded in order

to give full effect to the policy of the Act to promote and insure only free selections. *Cf. National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241.

This objective cannot be attained merely by restraining unfair labor practices through the cease and desist provisions. The refusal to bargain must be undone by restoring the representative freely chosen by the employees to the position which they conferred upon it but which the employer wrongfully withheld. The order, if it is to effectuate the policies of the Act, must do so by "eradicating" all the effects of the unfair labor practices, "as from the beginning." *Agwilines, Inc.* v. *National Labor Relations Board,* 87 F. (2d) 146, 151 (C. C. A. 5). This can be accomplished only by including in the order a remedy adequate to relieve the coercive effects of the refusal to bargain; that remedy is enforcement of the obligation to negotiate.

In the present case this conclusion is further strengthened by the fact that the employer's unfair labor practices consisted not only of a refusal to bargain, which would have the natural effect of leading the employees away from the U. A. W., but of further illegal acts against the U. A. W. and in favor of the I. A. M. (*supra,* pp. 13–26) which were designed to place the majority precisely where petitioners now claim that it rests. In this respect, petitioners' claim is analogous to that advanced by the employer in the *Bradford Dyeing* case, that the majority vested in the com-

pany union as a result of the unfair labor practices, constituted a bar to enforcement of the order to bargain with the T. W. O. C. Precisely applicable here is the conclusion in that case (*supra*, p. 64), that the employer's unfair labor practices could not serve to change the representative freely selected by the employees.[39a]

The decisions in *National Labor Relations Board* v. *National Licorice Co.*, 104 F. (2d) 655 (C. C. A. 2) and *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8), upon which petitioners rely (Br. 43–46), as well as the decision in *National Labor Relations Board* v. *American Manufacturing Co.*, 106 F. (2d) 61 (C. C. A. 2), give no weight to the important consideration that refusals to bargain and other illegal invasions of the employees' rights to organize and bargain collectively, do have the natural result of dissipating union majorities and of casting serious doubts upon the free nature of subsequent majorities claimed prior to remedying of the unfair labor practices. In conditioning enforcement of the bargaining order upon proof of representation at the time of review, those decisions must assume that an unremedied refusal on the part of an employer to recognize the repre-

[39a] The size of the U. A. W.'s conceded majority representation of the production employees, including 20 of the 63 toolroom employees (note 26, p. 46, *supra*) raises a strong presumption that it would have continued as the freely chosen representative had not freedom of choice been destroyed.

sentative which the employees freely selected is irrelevant to that agency's continued free designation, and will not influence the employees' decision whether or not to designate that representative again in an election held prior to remedying of the unfair labor practices. We submit that a failure to enforce the bargaining order leaves the employees subject to impediments to a free choice equal in force, and at least equivalent in character, to those left in operation by the temporary disestablishment ordered by the Circuit Court of Appeals in *National Labor Relations Board* v. *Falk Corp.*, 106 F. (2d) 454 (C. C. A. 7), and disapproved by this Court, 308 U. S. 453. If a choice of representatives, freely made, is permitted to go unprotected by the agencies of government charged with safeguarding that choice, the employees who made it cannot be expected to venture that selection again.

In short, if the Board's "judgment and discretion in determining, upon the basis of the findings, whether the case is one requiring an affirmative order, and in choosing the particular relief to be ordered" (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265) is to be overruled upon the single basis that the chosen representative's majority status may have been lost after the refusal to bargain, full scope will be given to the unfair labor practices in achieving their intended result and the development of genuine collective bargaining will

be substantially hindered. We submit that the Act does not allow an interpretation yielding results so inconsistent with its purposes. If they were to be avoided in this case, the Company's refusal to bargain with the U. A. W. had to be remedied by an order requiring such bargaining before the I. A. M. could claim authority to act as the employees' representative.

2. The decisions modifying the Board's bargaining orders prevent effective and orderly administration of Section 8 (5). Congress intended that this section should be enforced, and in a workable way. Yet, if asserted changes in representation, alleged to have occurred subsequent to a refusal to bargain with a majority representative, are a barrier to remedying the unfair labor practices by an order compelling obedience to the statutory obligation, Section 8 (5) is rendered sterile. If one such claim must be inquired into, successive ones must be, with the result that the Board, as well as the reviewing courts, could never reach a decision.[40]

[40] In *National Labor Relations Board* v. *The Boss Manufacturing Co.*, 107 F. (2d) 574 (C. C. A. 7), the Board rendered an order, in August 1937, based upon a prior refusal to bargain. The order required the company to bargain with the union illegally denied recognition. In October 1937 the Board filed a petition for enforcement. In January 1938 the court granted a motion by the company to adduce additional evidence, in which motion it was asserted, *inter alia*, that the proof of majority was too old to support the bargaining order. Upon further hearing before the Board it appeared that membership in the union had increased since the refusal to bargain. The Board filed its supplemental findings with

That is the necessary result of the position of the court in the *Hamilton-Brown* case.

The modification ordered by the Circuit Court of Appeals in the *National Licorice* and *American Manufacturing* decisions, which was not before this Court on review, is even more clearly erroneous; in those cases, without any evidence tending to establish a change, but solely upon doubts raised *sua sponte* and based in part on lapse of time, the reviewing court declined to enforce the bargaining order as issued. Lapse of time is inevitable, through no fault of the employees, their representative, or the Board. It is a concomitant of all administrative or judicial proceedings. Certainly the procedure Congress prescribed for enforcement of the Act cannot be utilized as a basis for not enforcing it. If changes in representation thought to have occurred after a refusal to bargain are relevant at all, which we submit they are not (*supra,* pp. 64–70), clearly only changes occurring prior to the Board's order and reflected in the record made at the hearing before the Board should be considered. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.,* 303 U. S. 261, 271; *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 230; *National*

---

the court and again requested enforcement of its order. When the case came on to be heard in June 1939 the company insisted that proof of the union's then majority status was an essential prerequisite to enforcement of the bargaining order. The court enforced the provision in question without expressly ruling upon this objection.

Labor Relations Board v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 249–250. *Cf. National Labor Relations Board* v. *Fansteel Metallurgical Co.*, 306 U. S. 240, 261–262.

Petitioners attack the view of the court below that acceptance of their contention "would make a merry-go-round of the Act" (R. 375) on the ground that the Board can withhold a bargaining order but dissipate the effects of the unfair labor practices in other respects and then hold an election (Br. 46–48). Noticeably absent is any suggestion as to how the coercive effects of a refusal to bargain with a chosen representative can be dissipated without a requirement that the rights illegally denied be granted (*supra*, pp. 66–70). The argument, in essence, is similar to that advanced on behalf of the employer in the *Falk* case. There the effort was to convert an unfair labor practice proceeding designed to halt and remedy the employer's maintenance of a company union into a representation proceeding designed to determine whether the company union would be selected as the employees' representative even if the employer's sponsorship was withdrawn. Here the effort is to convert an unfair labor practice proceeding designed to halt and remedy an illegal refusal to bargain with a representative whose authority is conceded, into a proceeding for certification of representatives. Both efforts, if successful, have the necessary consequence of permitting unfair labor practices further to defer all collective bar-

gaining, in addition to allowing them full scope in influencing a selection which must be that of the workers alone. Unless the determinative issue in a proceeding under Section 10 is whether the charging union was the duly authorized representative at the time of the refusal to bargain, such proceedings are entirely futile, and may as well be dispensed with in favor of representation proceedings under Section 9 designed to select a representative, whether or not freedom of choice is assured. And if petitioners reply that it is the bargaining order, not the fact of violation, to which subsequent shifts of majority are relevant, the rejoinder is that proceedings under Section 10 based upon refusals to bargain are entirely futile if the Board, while free to find a violation, is powerless to order an effective remedy.

Petitioners contend that the order fastens upon the employees a representative which they possibly may no longer desire, independently of the effects of the unfair labor practices. But "until the Board's order has been faithfully carried out" the employees' real desires "are matters of speculation and argument." *National Labor Relations Board* v. *Brown Paper Mill Co.,* 108 F. (2d) 867, 872 (C. C. A. 5). Nor may it be said that the order deprives the employees of power to change their representative, and thus has the necessary, if not the intended, effect of frustrating petitioners' efforts to be designated as the representative.

The order does not assure to the U. A. W. a permanent status, or status for any fixed period of time. Section 9 of the Act provides adequate machinery for resolving questions of representation after genuine freedom of selection is restored by removing the impediments the employer has erected. The union attaining its claimed representation after unfair labor practices have destroyed freedom of choice need only wait until this condition has been corrected by compliance with the order; it is then free to petition the Board under Section 9 for investigation of the question concerning representation. In the present case the Company has long since complied with the Board's order; petitioners have therefore long been free to obviate the prejudice they now assert by filing such a petition. Instead, they have continued to rely upon the request for an election made by them before the Board had made any order and when the unfair labor practices were in full effect, and have continued to insist that the election must be conducted as part of an unfair labor practice case, where it has no proper place.

The bargaining order cannot be said to foist an unwanted representative upon the employees, or to preclude recognition of any union seeking to achieve representation, when the employees, or any labor organization on their behalf, may raise

anew the issue of representation.[41] The question here is whether that issue must be determined, as petitioners contend, in circumstances which do not assure full freedom of choice. We submit that to anticipate the question of change without, and in advance of, according recognition to a selection voluntarily made, is to proceed under conditions which leave the employees subject to improper restraints. Obtaining collective bargaining should not require the employees to pay such a price. The essence of petitioners' claim is that they had an absolute right to force the issue at a time when the scales were weighted in their favor. Denial of such a right, they claim, was arbitrary on the part of the Board.

The Board's position that asserted shifts of majority following refusals to bargain or other interference cannot be viewed apart from the unfair labor practices and cannot serve to preclude the normal relief for a violation of Section 8 (5),

[41] The remedy deemed appropriate in the *Railway Clerks* case was reinstatement of the last freely chosen representative to the position of bargaining agency "until such time as these employees by a secret ballot taken in accordance with the further direction of the Court, and without the dictation or interference of the Railroad Company and its officers, should choose other representatives" (281 U. S., at 557). This remedy, devised by a court of equity to restore the status disrupted by interference with freedom of choice, is even more appropriate under the National Labor Relations Act since Section 9 is expressly designed to determine a change in representation and readily permits effective expression of a change.

has been approved by the Circuit Courts of Appeals for the First, Fourth, Seventh, Eighth, and Tenth Circuits in well-reasoned opinions. *National Labor Relations Board* v. *Somerset Shoe Co.*, 111 F. (2d) 681, 690–691 (C. C. A. 1); *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632, 640 (C. C. A. 4); *M. H. Ritzwoller* v. *National Labor Relations Board*, decided May 8, 1940 (C. C. A. 7);[42] *Bussmann Mfg. Co.* v. *National Labor Relations Board*, 111 F. (2d) 783, 788 (C. C. A. 8); *Continental Oil Co.* v. *National Labor Relations Board*, 113 F. (2d) 473, 481 (C. C. A. 10). See, also, *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 869–870 (C. C. A. 2), cert. denied, 304 U. S. 576; *National Labor Relations Board* v. *Whittier Mills Co.*, 111 F. (2d) 474, 478 (C. C. A. 5); *National Labor Relations Board* v. *Louisville Refining Co.*, 102 F. (2d) 678, 681 (C. C. A. 6), cert. denied, 308 U. S. 568; *National Labor Relations Board* v. *Biles-Coleman Lumber Co.*, 96 F. (2d) 197, 198, 98 F. (2d) 18 (C. C. A. 9); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 790 (C. C. A. 9). We submit that the construction of the Act thus approved is a reasonable one and that its acceptance is necessary if the right to collective bargaining conferred by the Act is not to become illusory.

---

[42] But *cf. Stewart Die Casting Corp.* v. *National Labor Relations Board*, decided July 3, 1940 (C. C. A. 7).

CONCLUSION

We respectfully submit that the provisions of the Board's order challenged by petitioners are valid and that the decree below should be affirmed.

FRANCIS BIDDLE,
Solicitor General.

CHARLES FAHY,
Assistant Solicitor General.

THOMAS E. HARRIS,
Special Assistant to the Attorney General.

ROBERT B. WATTS,
Associate General Counsel,

LAURENCE A. KNAPP,
Assistant General Counsel,

MORTIMER B. WOLF,
RUTH WEYAND,
Attorneys,
National Labor Relations Board.

OCTOBER 1940.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. IV, Title 29, Sec. 151 *et seq.*) are as follows:

> SECTION 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SECTION 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a),

in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

SECTION 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. * * *

U. S. GOVERNMENT PRINTING OFFICE: 1940